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IN THE

Supreme Court of the United States

October Term, 1954
No. 533

ARTHUR WAITUS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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TABLE OF CONTENTS

	PAGE
Citation to Opinion Below	1
Jurisdiction	2
Questions Presented	2
Constitutional and Statutory Provisions Involved	3
U. S. Const. Amend. XIV, § 1	3
U. S. Const. Art. IV, § 1	3
General Statutes of North Carolina, §§ 15-56, 15-57, 15-64, 15-68, 15-80 (1953 Recomp.)	3
Statement of the Case	4
Reasons for Allowance of the Writ	8
I.—The approval by the court below of petitioner's conviction probably is not in accord with the applicable decisions of this Court because the conviction was based on an involuntary confession	8
IIA.—The approval by the court below of petitioner's trial and conviction in the prevailing atmosphere of community hostility and prejudice, as reflected in the record, indicates a denial of due process in probable conflict with applicable decisions by this Court	11
IIB.—The approval by the court below of petitioner's trial and conviction by a jury which was not impartial indicates a denial of due process in probable conflict with applicable decisions of this Court	14
III.—The approval by the court below of petitioner's conviction after his presence in the jurisdiction had been obtained by fraud and intimidation raises a federal question of substance not heretofore decided by this Court	17

PAGE

APPENDIX:

General Statutes of North Carolina (1953 Recomp.) 1a

Excerpts From Record 4a

Opinion of Stukes, *A. J.* 56a

Opinion of Oxner, *J.* 66a

Petition for Rehearing 81a

Motion for New Trial 83a

Affidavit of Thomas Sanders, Verified October 6, 1954 ..... 84a

Deposition of Thomas Sanders, Verified October 10, 1954 ..... 86a

Motion for Stay of Execution 89a

Table of Cases

Adamson v. California, 332 U. S. 46 15
Ashcraft v. Tennessee, 322 U. S. 143 .....9, 10
Avery v. Georgia, 345 U. S. 559 17

Brown v. Allen, 344 U. S. 443 .....10, 17
Brown v. Board of Education, 347 U. S. 483 17
Brown v. Mississippi, 297 U. S. 278 10
Buchalter v. New York, 319 U. S. 427 15

Cassel v. Texas, 339 U. S. 282 17
Chambers v. Florida, 309 U. S. 227 .....10, 15

Dow's Case, 18 Penn. St. 37 (1851) 18

Ex Parte Scott, 9 B. & C. 446 (1829) 18

Frisbie v. Collins, 342 U. S. 519 .....18, 19
Haley v. Ohio, 332 U. S. 596 .....9, 10

PAGE

Harris v. South Carolina, 338 U. S. 68 .....9, 10
Hyatt v. Corkran, 188 U. S. 691 20

In Re Johnson, 167 U. S. 120 (342 U. S. at 522) 18, 19

Ker v. Illinois, 119 U. S. 436 .....18, 19

Lascelles v. Georgia, 148 U. S. 537 .....18, 19
Leyra v. Denno, 347 U. S. 556, 558 9
Lisenba v. California, 314 U. S. 219 .....10, 13
Lopez & Sattler's Case, So. Car., Law 283 (1829); S. C. 19 Am. Dec. 679 18

Mahon v. Justice, 127 U. S. 700 .....18, 20
Malinsky v. New York, 324 U. S. 401 9
Moore v. Dempsey, 261 U. S. 86 .....13, 15

Remmer v. U. S., 347 U. S. 227 16

Shepherd v. Florida, 341 U. S. 50 17
Ship Richmond v. United States (The Richmond), 9 Cranch, 102 18
Stroble v. California, 343 U. S. 181 .....10, 12, 13
State v. Brewster, 7 Vt. 118 (1835) 18
State v. Ross and Mann, 21 Iowa, 467 (1866) 18
Stein v. New York, 346 U. S. 156 .....10, 11
Strauder v. W. Va., 100 U. S. 303 17

Thiel v. Southern Pacific Co., 328 U. S. 217 14
Turner v. Pennsylvania, 338 U. S. 62 .....9, 10

Ward v. Texas, 316 U. S. 547 10
Watts v. Indiana, 338 U. S. 49 .....9, 10
White v. Texas, 310 U. S. 530 10

Constitutional and Statutory Provisions Involved

PAGE

28 U. S. C. § 1257 (3) (1952) 2

General statutes of North Carolina, §§ 15-56, 15-57, 15-64, 15-68, and 15-80 .....3, 19n

Scott, Austin W. Jr., Criminal Jurisdiction of a State Over a Defendant Based Upon His Presence Secured by Force and Fraud, 37 Min. L. rev. 91, 107 (1953) 20n

Supreme Court, 1951 term, 66 Harv. L. rev., 89, 127 (1952) 20

United States Constitution:
Amendment XIV, § 1 3
Article IV, § 1 3

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment affirming petitioner's conviction and the orders denying petitioner's motions for a rehearing and for a new trial entered in the Supreme Court of South Carolina in the above-entitled case on September 14 and October 13, 1954, respectively.

Citation to Opinion Below

The opinion of the Supreme Court of South Carolina, Case No. 3832, Opinion No. 16908, which is not yet reported, is set forth in the Appendix hereto at page 56a.

Jurisdiction

The judgment of the Supreme Court of South Carolina, affirming petitioner's conviction of murder, was entered on September 14, 1954 (App., p. 56a). The orders of said court denying petitioner's motions for a rehearing and for a new trial were entered on October 13, 1954 (App., pp. 82a, 83a). The order of said court denying petitioner's motion for a stay of execution pending application for a petition for a writ of certiorari to this Court was entered on October 19, 1954.

On October 20, 1954, this Court entered an order staying petitioner's execution pending the filing and disposition of a petition for a writ of certiorari to review the judgment of the court below.

Jurisdiction to review said judgment is conferred on this Court by the provisions of 28 U. S. C. § 1257(3) (1952 Ed.).

Questions Presented

1. Whether petitioner's rights under the Due Process Clause of the Fourteenth Amendment were violated by the use in obtaining his conviction of a confession which petitioner contends was involuntary?

2. Whether petitioner's rights under the Due Process Clause of the Fourteenth Amendment were violated on the ground that petitioner was not afforded a fair trial because (A) the trial was conducted in an atmosphere of hostility and prejudice and (B) the jury was not impartial?

3. Whether petitioner's rights under the Due Process and Privileges and Immunities Clauses of the Fourteenth Amendment and the Full Faith and Credit Clause were violated by petitioner's conviction after his presence in the jurisdiction had been obtained by the fraud and intimidation of state officers?

Constitutional and Statutory Provisions Involved

U. S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U. S. Const. Art. IV, § 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

General Statutes of North Carolina, §§ 15-56, 15-57, 15-64, 15-68, 15-80 (1953 Recomp.)

These sections are set forth in the Appendix hereto at page 1a.

Statement of the Case

On April 30, 1951, a white woman was strangled to death in Georgetown, South Carolina (R., pp. 29-50).[1] On nothing more than the "hunch" of the chief of police (R., p. 89), a warrant was issued on May 8, 1951, for the arrest of petitioner, an illiterate Negro, as the murderer of the deceased woman (App., pp. 5a, 18a, 22a).

The record discloses that petitioner was in Georgetown until mid-afternoon of Sunday, May 6, 1951, six days after the murder occurred, at which time he left town (App., pp. 33a, 42a).

Having learned that petitioner was last seen in one Henry Evans' automobile, the sheriff and other law enforcement officers threatened to hold Evans in jail until petitioner was found unless he, Evans, led them to petitioner (App., pp. 51a-53a). Accordingly, on Thursday, May 10, 1951, the sheriff, two other law enforcement officers and Evans proceeded to Fairmont, North Carolina, to apprehend petitioner (App., p. 5a). By prearrangement, Evans located petitioner and requested him to return to Georgetown (App., pp. 5a, 14a, 52a). Evans and petitioner testified that Evans asked petitioner to return because his mother was sick (App., pp. 35a, 52a), but the sheriff denied that he told Evans to make that statement to petitioner (App., p. 14a). Petitioner and Evans departed in Evans' automobile, but were overtaken almost immediately by the sheriff, the officers who had accompanied him and a deputy sheriff from Fairmont (App., pp. 5a, 52a). Petitioner testified that the officers asked him where he was going and offered to take him to Georgetown (App., p. 36a), although the sheriff testified that he arrested petitioner under the war-

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[1] Matter appearing only in the Transcript of Record is designated by "R." followed by the record page reference; matter appearing in the Appendix hereto is designated by "App." followed by the appendix page reference.

rant (App., pp. 5a, 14a-15a). The party returned directly to Columbia, South Carolina, and petitioner was taken to police headquarters (App., p. 15a).

The sheriff testified that he questioned petitioner during the three-hour trip from Fairmont to Georgetown, and for one hour after arriving in Georgetown (App., pp. 5a, 9a), that he questioned petitioner again the next day, May 11, 1951, for several hours, again on May 15 (App., p. 9a), and possibly on May 16 (App., p. 17a); that he did not question petitioner again until May 21, commencing at 3:00 p. m. and continuing periodically until the confession was given and signed after midnight (App., pp. 10a-12a). The sheriff also testified that he did not know whether or not other officers may have questioned petitioner during the period he was held (App., p. 17a). A deputy sheriff testified that he questioned petitioner once in the absence of the sheriff (R., p. 207) and that he did not know whether or not other officers may have questioned him (R., p. 210).

Petitioner testified that he was questioned for about two hours upon arrival in Columbia and for two or three hours each and every day until May 21 (App., pp. 36a-37a); that on May 21 he was questioned from before breakfast until after midnight, when the alleged confession was made—the thirteenth day after he was taken into custody (App., pp. 37a-39a). Petitioner claims that on the day the confession was obtained he was beaten by an officer with a strap and a blackjack (App., p. 38a). He also testified that on the same day, one Charles Blunt, a Negro, whom the sheriff alleged petitioner had implicated, was put into a room alone with petitioner and beat him (R., p. 147; App., p. 38). The sheriff and the law enforcement officers who testified consistently denied that petitioner was beaten (App., pp. 5a-7a, 12a; R., pp. 207, 391-392, 393, 402, 403, 407). Petitioner testified that he was not properly fed during the last day of questioning (App., p. 39a), but this was denied (App., p. 10a; R., pp. 215, 402, 407). Petitioner tes-

tified that at no time was he advised of his right to obtain counsel or remain silent (App., p. 39a); however, the officers testified that he was advised at each questioning that he did not have to speak, that anything he said might be used against him and that he could see a lawyer if he wished; and that at no time did he ask for a lawyer or to see friends or relatives (App., pp. 7a-9a; R., pp. 150, 211).

It is uncontroverted that petitioner was detained from May 10 until the early morning hours of May 22, when the confession was signed, that he was questioned each and every day that he was held, that he did not consult counsel nor was he visited by relatives or friends during that period, that he was in the continuous custody of the same police officers from the time of his arrest until the alleged confession was made, and that Charles Blunt, the individual whom petitioner testified beat him, was present when the confession was signed (App., p. 13a).

After the alleged confession was obtained, petitioner was arraigned at the June 1951 Term of the Court of General Sessions for Georgetown County. Upon arraignment, attorneys appointed by the Court moved for a change of venue, and, after a full hearing, the motion was granted and the place of trial changed to Marion County (App., p. 66a). At a special term of court in that county, held in August 1951, petitioner was tried, convicted, and sentenced to death by electrocution (App., p. 67a). That conviction was reversed, however, on the ground that the grand and petit juries which indicted and convicted petitioner were illegally constituted in that Negroes were systematically excluded therefrom (App., pp. 75a, 80a).

A second trial, the one here involved, was held January 12-14, 1954, in the Court of General Sessions for Georgetown County (R., pp. 2, 419). Petitioner again was convicted and sentenced to death in the electric chair (R., p. 423).

At the trial, petitioner made repeated objections to the introduction in evidence and testimony with respect to his alleged confession on the ground that it was involuntary (App., pp. 10a, 11a, 12a, 13a). These objections were reasserted in motions for a directed verdict at the close of the State's case (App., p. 23a) and for a judgment notwithstanding the verdict (App., p. 53a). The objections were overruled and the motions were denied (App., pp. 10a, 13a, 23a, 55a). On direct appeal to the court below, petitioner reasserted his objections to the alleged confession and argued that his constitutional rights were violated because his presence in the jurisdiction was obtained by fraud and intimidation. The court below, in affirming the conviction, held that the confession was properly admitted (App., pp. 59a-60a) and that the jurisdictional argument was without merit (App., pp. 61a-65a).

At the trial, the one Negro who sat on the jury was segregated because of his race pursuant to the following action by the trial court and counsel:

> "It is agreed between the attorneys for the State and Defendant that the jury may be kept together during the trial, and that the white members of the jury be placed at one hotel or rooming house, with bailiffs, and that the colored member of the jury be kept at a separate hotel or rooming house, in charge of bailiffs." (App., p. 4a).

Following the trial, but before final action by the court below, the Negro juror executed an affidavit in which he stated that he did not believe petitioner to be guilty, that he voted contrary to his belief because he feared he would lose his job and that his life would be at stake, that one of his superiors at the place of his employment also served on the jury,[2] and that he did not believe that a fair trial

[2] The record also discloses that the deceased woman's husband also was employed by the same company (R., p. 59).

for petitioner was possible in Georgetown County (App., p. 85a). Supported by this affidavit, petitioner moved the State Supreme Court for a new trial and for a rehearing (App., pp. 81a, 83a).

At the argument of those motions, respondent submitted a deposition of the same juror, taken by the sheriff of Georgetown County in the presence of one of his deputies, the sheriff of another county, a supervisor at the place of petitioner's employment, and the state solicitor, in which deposition he contradicted substantially all of the prior affidavit. The State Supreme Court denied both motions (App., pp. 82a, 83a).

REASONS FOR ALLOWANCE OF THE WRIT

I.

The approval by the court below of petitioner's conviction probably is not in accord with the applicable decisions of this Court because the conviction was based on an involuntary confession.

The uncontroverted evidence shows that following the arrest of petitioner, an illiterate Negro, in North Carolina by South Carolina officers under a warrant charging him with the murder of a white woman in South Carolina, he was imprisoned in South Carolina and questioned every day for twelve days by the officers who made the arrest. During this period he did not see his relatives or friends, nor was he afforded the benefit of counsel, nor was he arraigned or given any type of preliminary hearing. On the thirteenth day, after ten to eighteen hours of continuous questioning, petitioner signed an alleged confession. There is conflicting evidence as to whether or not he was beaten, given adequate food and rest and advised of his constitutional rights.

In addition to the circumstances under which the alleged confession was obtained, further suspicion is cast by the language, phraseology and grammar in which it is couched (App., pp. 19a-21a; R., pp. 423-426). According to the testimony of the stenographer, she recorded and transcribed the alleged confession, with the exception of the opening and closing paragraphs, verbatim, exactly as dictated by petitioner (App., pp. 21a, 22a). However, petitioner admittedly was illiterate. Yet, the confession uses terms such as "blouse, pants, girdle, sanitary belt and kotex" and "my intentions were to have sexual intercourse with her". The emphasis given to distances and times and to details of circumstantial evidence, which the officers discovered in the course of their investigation before the alleged confession was rendered (R., pp. 71, 137, 152, 159, 163, 168, 176, 178, 183, 184, 185, 405)—such as the scream, the dog bark, the newspaper over the face, the loss of the watch and the head hitting the tombstone—is improbable in a spontaneous statement by one of petitioner's limited intellectual ability. The recital of the exact titles and names of the arresting officers is equally improbable—"I was later arrested in North Carolina by Sheriff Cribb of Georgetown County, Deputy Sheriff Woodrow Carter and Lt. Roy F. Williams" (App., p. 21a).

The improbability of the alleged confession as petitioner's spontaneous statement is further illustrated by an examination of the ungrammatical language he used in testifying at the trial (App., pp. 24a-50a).

This Court repeatedly has held, as stated in *Leyra* v. *Denno*, 347 U. S. 556, 558, that "[t]he use in a state criminal trial of a defendant's confession obtained by coercion —whether physical or mental—is forbidden by the Fourteenth Amendment." *Harris* v. *South Carolina*, 338 U. S. 68; *Watts* v. *Indiana*, 338 U. S. 49; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Haley* v. *Ohio*, 332 U. S. 596; *Malinsky* v. *New York*, 324 U. S. 401; *Ashcraft* v. *Tennessee*, 322 U. S. 143;

Ward v. *Texas,* 316 U. S. 547; *White* v. *Texas,* 310 U. S. 530; *Chambers* v. *Florida,* 309 U. S. 227; *Brown* v. *Mississippi,* 297 U. S. 278; see *Stein* v. *New York,* 346 U. S. 156; *Brown* v. *Allen,* 344 U. S. 443; *Stroble* v. *California,* 343 U. S. 181; *Lisenba* v. *California,* 314 U. S. 219.

The admission of a confession obtained under circumstances such as those disclosed in this record probably is in conflict with the foregoing decisions of this Court. See *Harris* v. *South Carolina, supra,* where under similar circumstances the confession was obtained on the third day of prolonged questioning; *Watts* v. *Indiana, supra,* and *Turner* v. *Pennsylvania, supra,* where the confessions were obtained on the sixth day of questioning; *Haley* v. *Ohio, supra,* where a 15-year-old suspect was induced to confess after only six hours.

In no case decided by this Court does it appear that a confession has been deemed voluntary where obtained following questioning for twelve days under circumstances comparable to those in this case.

The duration of the questioning is not the only factor which is relevant to the determination of the voluntariness of a confession. All the attendant circumstances must be considered. Thus, when, as here, the power of resistance of the confessor, an illiterate Negro, is weighed against the pressure exerted by members of a dominant group in positions of authority, the permissible limit is easily exceeded. *Stein* v. *New York,* 346 U. S. 156, 185; *Harris* v. *South Carolina,* 338 U. S. 68, 70; *cf. Haley* v. *Ohio,* 332 U. S. 596; see *Ashcraft* v. *Tennessee,* 322 U. S. 143, 173 (dissenting opinion). Moreover, the fact that from the moment of his arrest petitioner was never wholly removed from the constant custody, observation and influence of those whose persistent questioning resulted in his confession is relevant to the issue of voluntariness. *Chambers* v. *Florida,* 309 U. S. 227, 235.

The record wholly fails to disclose, independent of the confession, other substantial evidence on which the conviction could be sustained, and the rule suggested in *Stein* v. *New York*, 346 U. S. 156, is not reached.

IIA.

The approval by the court below of petitioner's trial and conviction in the prevailing atmosphere of community hostility and prejudice, as reflected in the record, indicates a denial of due process in probable conflict with applicable decisions by this Court.

On motion for rehearing in the court below, the issue of community hostility and prejudice was squarely presented and supported by the affidavit of the Negro juror who, in describing the pressures which led him to vote for conviction contrary to his belief, said: "I also knew that the general feeling the White People in Georgetown County, South Carolina was and still is against Arthur Waitus . . . and if I had not voted to convict him my life would have been at stake because I felt an atmosphere of threats throughout the entire trial" (App., p. 85a). The court below, without comment or opinion, disposed of this issue merely by denying the motion (App., p. 82a).

When petitioner was first arraigned at the June 1951 Term of the Court of General Sessions for Georgetown County, the motion of his court-appointed counsel for a change of venue was granted after a full hearing and the place of trial changed to Marion County. The conviction then obtained was reversed by the court below on grounds not relevant to this petition (App., pp. 66a-80a). Petitioner's second and instant trial was held in the Court of General Sessions for Georgetown County, the same court which previously had granted petitioner's motion for a change of venue. It does not appear that a motion for a

change of venue was made at the second trial, and, except for two statements in the record by the trial judge in the form of instructions for the preservation of order in and around the court (R., pp. 28, 417), there is nothing to indicate the prevailing community attitude and atmosphere.

In *Stroble* v. *California,* 343 U. S. 181, Mr. Justice Clark, speaking for the majority with reference to a similar issue, said (pp. 193-194):

> ". . . At the outset it should be noted that at no point did petitioner move for a change of venue, although the California Penal Code explicitly provides that whenever "a fair and impartial trial cannot be had in the county" in which a criminal action is pending, the action may, upon motion of the defendant, be removed to "the proper court of some convenient county free from a like objection." *Of course petitioner's failure to make such a motion is not dispositive of the issue here, since the state court did not decide against petitioner on this ground but rather rejected on the merits his federal constitutional claim. . . .*
>
> The matter of prejudicial newspaper accounts was first brought to the trial court's attention after petitioner's conviction, as one of the grounds in support of a motion for a new trial . . . Indeed, at no stage of the proceedings has petitioner offered so much as an affidavit to prove that any juror was in fact prejudiced by the newspaper stories . . ." (emphasis added).

Mr. Justice Frankfurter, dissenting, recognized the same rule (p. 198):

> "One of the petitioner's grounds for attacking his conviction is that the trial lacked fundamental fairness because the district attorney himself initiated the intrusion of the press into the process of trial . . .

> "The issue was raised after verdict, and the Supreme Court of California might have disposed of the claim by ruling that it had not been made at the stage of the proceeding required by State law. That court, however, chose not to do so. It permitted the petitioner to invoke the Due Process Clause and thereby tendered a federal constitutional issue, as this Court recognizes, for our disposition."

Petitioner submits that the *Stroble* case indicates (1) that the failure to move for a change of venue in the trial court is not dispositive of the issue here raised in the instant case, and (2) that, meeting the deficiency in the *Stroble* case, the record herein discloses that petitioner did offer the best possible evidence that a juror was in fact influenced and prejudiced by the prevailing community atmosphere of hostility—an affidavit by the juror himself.

In *Lisenba* v. *California,* 314 U. S. 219, 236, this Court determined that upon showing the presence of such prejudice in the community, petitioner's trial was "fatally infected" with an absence of "that fundamental fairness essential to the very concept of justice." Previously, in *Moore* v. *Dempsey,* 261 U. S. 86, this Court stated the applicable principle in the following terms (pp. 90-91):

> "In Frank v. Mangum, 237 U. S. 309, 335, it was recognized, of course, that if in fact a trial is dominated by a mob, so that there is an actual interference with the course of justice, there is a departure from due process of law; and that "if the State, supplying no corrective process, carries into execution a judgment of death or imprisonment based upon a verdict thus produced by mob domination, the State deprives the accused of his life or liberty without due process of law." We assume, in accordance with that case, that the corrective process supplied by the State may be so adequate that interference by

> habeas corpus ought not be allowed. It certainly is true that mere mistakes of law are not to be corrected in that way. But if the case is that the whole proceeding is a mask,—that counsel, jury, and judge were swept to the fatal end by an irresistible wave of public passion, and that the State Courts failed to correct the wrong,—neither perfection in the machinery for the correction nor the possibility that the trial court and counsel saw no other way of avoiding an immediate outbreak of the mob can prevent this Court from securing to the petitioners their constitutional rights."

This principle is now so well established that there appears to be no room for doubt that upon a proper showing of its application a trial and conviction in violation thereof will be reversed.

Petitioner submits that the foregoing principle is applicable in the instant case. The granting of the motion for a change of venue of the first trial was a judicial determination that a fair and impartial trial could not be had in Georgetown County. There is no evidence in the trial record to suggest that the same atmosphere did not prevail at the time of the instant trial; indeed, the affidavit of the Negro juror indicated that it did.

IIB.

The approval by the court below of petitioner's trial and conviction by a jury which was not impartial indicates a denial of due process in probable conflict with applicable decisions of this Court.

Where a jury trial is provided by State procedure, the jury must be impartial for the trial to be fair within the concept of due process. As stated by this Court in *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, 219, "The American

tradition in connection with either criminal or civil proceedings necessarily contemplates an impartial jury drawn from a cross section of the community." This Court has held that the right to a fair trial is a right admittedly protected by the due process clause of the Fourteenth Amendment, *Adamson* v. *California,* 332 U. S. 46; *Buchalter* v. *New York,* 319 U. S. 427; *Chambers* v. *Florida,* 309 U. S. 227; *Moore* v. *Dempsey,* 261 U. S. 86.

In this case, the record discloses that the jury which tried petitioner was not impartial. The Negro member of the jury, in the prevailing atmosphere of community hostility and prejudice, was unable to exercise that free and independent judgment as a juror which is essential to a fair trial. This is demonstrated in his affidavit to which reference previously has been made, in which he stated that one Vernon M. Hodge, a foreman at the same company where he was employed, also served on the jury which convicted petitioner and that:

> ". . . the reason why I voted to convict Arthur Waitus, alias 'Fat Eye' is because I felt if I voted contrary to other white men on the jury, I would have lost my job to the International Paper Company and that was the only means of support for my family . . . I also knew that the general feeling the white people in Georgetown County, South Carolina was and still is against Arthur Waitus, alias "Fat Eye" and if I had not voted to convict him my life would have been at stake because I felt an atmosphere of threats throughout the entire trial" (App., pp. 84a-85a).

In a deposition taken four days later by the sheriff, the Negro juror contradicted his previous statements concerning fear of loss of job and his personal safety. Even in that deposition, however, he expressed doubt that petitioner could have obtained a fair trial in Georgetown. It

is significant that the deposition was recorded by a supervisory employee at the International Paper Company; that the questions were propounded by the sheriff of Georgetown County in the presence of one of his deputies, the sheriff of an adjoining county and the state solicitor, who was the prosecuting attorney at the trial. The state solicitor also was the official before whom the deposition was taken.

Certainly this affidavit and deposition, and the circumstances under which they were given, raise serious doubts as to whether this juror could have exercised and did exercise that free and independent judgment to which petitioner was entitled. When, after a verdict, facts pertaining to influence or coercion of the jury have been unearthed, due process of law requires at least that there be a hearing on those facts to ascertain whether the defendant has been prejudiced thereby. *Remmer* v. *U. S.*, 347 U. S. 227. No such hearing or determination was made by the court below and it is submitted that this deprived petitioner of the due process of law.

Further, the Negro juror, solely because of his race, was physically segregated from the other members of the jury at the express direction of the trial judge, with the consent of petitioner's counsel and the prosecutor. It is recognized that not every separation of jurors prevents a fair trial by an impartial jury but where, as here, a Negro defendant has been charged with a capital offense involving a white woman, segregation of a Negro juror because of his race, in conformity with the public policy and/or laws of the State of South Carolina, bears directly on the impartiality of the jury and the fairness of the trial. The obvious effect of setting this one juror apart because of his race was to designate him as inferior to the other jurors and to subject him to those pressures and influences

which robbed him of the ability to render that free and independent judgment to which petitioner was entitled.

The cases dealing with systematic exclusion of Negroes from grand and petit juries represent a recognition of the realities of the situation with regard to the necessity of protecting the integrity of the American jury system from subversion by racial bias and prejudice. *Avery* v. *Georgia,* 345 U. S. 559; *Brown* v. *Allen,* 344 U. S. 443; *Shepherd* v. *Florida,* 341 U. S. 50; *Cassell* v. *Texas,* 339 U. S. 282; *Strauder* v. *W. Va.,* 100 U. S. 303. This protection is wholly lost when distinctions based on race are made between jurors. Candor requires the recognition that the plain purpose and effect of racial segregation is to perpetuate an inferior status for Negroes. *Cf. Brown* v. *Board of Education,* 347 U. S. 483. Such an attempt to create an inferior class status, when carried into a judicial proceeding, is especially reprehensible. Its sanction by a court precludes the possibility that a defendant can have a fair trial.

III.

The approval by the court below of petitioner's conviction after his presence in the jurisdiction had been obtained by fraud and intimidation raises a federal question of substance not heretofore decided by this Court.

As previously noted, the record indicates that petitioner was arrested in North Carolina by South Carolina officers acting under a South Carolina warrant, under circumstances amounting to fraud and intimidation. This raises the question whether or not the Fourteenth Amendment or other constitutional provision prevents a state court from obtaining criminal jurisdiction over a defendant thus brought before it.

Petitioner is aware that this Court, in *Frisbie* v. *Collins*, 342 U. S. 519, 522, held that the power of a state court to try a person for crime is not impaired by the fact that he has been brought within the court's jurisdiction by forcible abduction. The court considered itself bound by *Ker* v. *Illinois*, 119 U. S. 436; *Mahon* v. *Justice*, 127 U. S. 700; *Lascelles* v. *Georgia*, 148 U. S. 537; and *In Re Johnson*, 167 U. S. 120 (342 U. S. at 522).

Petitioner respectfully submits, however, that the precise question raised by this case was not determined in *Frisbie* v. *Collins* or in any of the authorities therein cited.

In the *Ker* case, which apparently was the only forcible abduction case decided on direct appeal and not on petition for habeas corpus, the issue was whether or not any constitutional rights of the abducted person were violated by his abduction from a foreign country, where an extradition treaty existed between the United States and that country. In answering that question in the negative, the Court relied on *Ex Parte Scott*, 9 B. & C. 446 (1829); *Lopez & Sattler's Case*, So. Car., Law, 283 (1829); S. C. 19 Am. Dec. 679; *State* v. *Brewster*, 7 Vt. 118 (1835); *Dow's Case*, 18 Penn. St. 37 (1851); *State* v. *Ross and Mann*, 21 Iowa, 467 (1866); *Ship Richmond* v. *United States* (*The Richmond*) 9 Cranch, 102. All of these cases involved either forcible abduction or seizure in a foreign country, or abduction by private individuals and not state officers and, therefore, are not necessarily controlling where, as here, the abduction was by state officers in an interstate situation.

Both the *Mahon* and *Lascelles* cases are clearly distinguishable. In the *Mahon* case, the State of West Virginia sought a writ of habeas corpus against Kentucky officials who were holding the accused in Kentucky after he had

been illegally seized and brought out of West Virginia. The Court held that the writ should be denied since neither the constitution nor the statutes passed pursuant thereto had provided any remedy to those so injured. In the *Lascelles* case the accused was properly surrendered by the Governor of New York and the only question was whether or not he could be tried in Georgia for an offense different from the one for which he was surrendered.

Similarly, the *Johnson* case is distinguishable because there the court found that the crime had been committed and the accused arrested within the jurisdiction of the trial court.

In the *Frisbie* case, in answering the question whether or not the Federal Kidnapping Act changed the rule first established in the *Ker* case, the court was not called upon to reach the constitutional questions here involved. Further, the *Frisbie* case arose on a habeas corpus proceeding and not by appeal from a conviction; hence, somewhat different considerations were involved.

The State of North Carolina, in its extradition statute has provided an orderly procedure for the return of criminals found within is borders who have fled from justice in another state.[3] Petitioner contends that action of the South Carolina authorities in abducting him from North Carolina violated his rights under the Due Process and Privileges and Immunities Clauses of the Fourteenth Amendment and failed to give full faith and credit to the laws of North Carolina.

Although petitioner does not argue that the Constitution of the United States and laws of North Carolina have the effect of affording him asylum in North Carolina, he

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[3] General statutes of North Carolina, §§ 15-56, 15-57, 15-64, 15-68 and 15-80 (1953 (Recomp.). See Appendix, p. 1a.

does submit that he has a federally protected right to be extradited in accordance with the laws of North Carolina. *Cf. Mahon* v. *Justice,* 127 U. S. 700; *Hyatt* v. *Corkran,* 188 U. S. 691.

As recently stated [4]:

> "It seems that the courts have simply fallen into the habit of repeating, parrot-like, that a court does not care how a defendant comes before the court, without thinking whether such a rule is sound on principle. In these days of low moral standards among public officials, both law enforcement officers and others, it is especially important to re-establish public respect for law. This simply cannot be done if the very people who enforce the law are themselves guilty of serious violations of law. A rule of procedure which would forbid courts to try accused persons who have been subjected to the type of lawless treatment covered in this article would help to resurrect something we seem to have lost and which we badly need to find—a spirit of respect for law and order."

See also "The Supreme Court, 1951 Term," 66 Harv. L. Rev., 89, 127 (1952).

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[4] Scott, Austin W. Jr., *Criminal Jurisdiction of a State Over A Defendant Based Upon His Presence Secured by Force and Fraud,* 37 Min. L. rev. 91, 107 (1953).

WHEREFORE, for the foregoing reasons, the petition for writ of certiorari to review the judgment below should be granted.

Respectfully submitted,

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APPENDIX

General Statutes of North Carolina (1953 Recomp.)

Sec. 15-56. Subject to the provisions of this article, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State.

Sec. 15-57. No demand for extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 15-60, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that he thereafter fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before a magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

General Statutes of North Carolina (1953 Recomp.)

Sec. 15-64. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State, who shall inform him of the demand made for his surrender and of the crime for which he is charged and that he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

Sec. 15-68. The arrest of any person may be lawfully made also by any peace officer or private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in § 15-67; and thereafter his answer shall be heard as if he had been arrested on a warrant.

Sec. 15-80. Any person arrested in this State charged with having committed a crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§ 15-61 and 15-62 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence

of a judge of any court of record within this State, a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided in § 15-64.

If and when such consent has been duly executed it shall forthwith be forwarded to the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver of procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State.

Excerpts From Record

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[28] (At this point the thirteenth juror is sworn.)

(The jury was sent to their room.)

(At this point, in the absence of the jury, The Solicitor requests the Court to call the roster of other cases pending, and due to the illness of one of the attorneys, who had just gotten out from an attack of flu, he made a motion for continuance of his cases because of his weakened condition. This motion was granted by the Court.)

The Court: It is agreed between the attorneys for the State and Defendant that the jury may be kept together during the trial, and that the white members of the jury be placed at one hotel or rooming house, under bailiffs, and that the colored member of the jury be kept at a separate hotel or rooming house, in charge of bailiffs.

The Court: We do not want any expressions of approval or disapproval in any way. I want the Sheriff to have enough bailiffs, and if anything is done, I want them to bring any member of the audience before me that displays any feelings of approval or disapproval, any time during the trial—I want them immediately apprehended and brought before me. During the recess of the Court, I want you to refrain from smoking in the Court Room. I want the bailiffs to understand that no photographers will be allowed inside the Court Room with a photographic machine of any kind. All of the bailiffs in charge of this jury and in charge of the prisoner will see to it that no photographs are taken outside, of the prisoner during this trial.

[29] (At this point the jury return from their room to their seats.)

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TESTIMONY OF SHERIFF GARRIS CRIBB

Direct Examination:

[139] A. Towards the last of the week I wanted to talk with Arthur Waitus. We had talked to some people. We started looking for Arthur Waitus and couldn't find him. On Sunday, Mr. Nobles called me, and we had a conference. We still looked for Arthur Waitus. [140] I believe it was the 8th of May, on Tuesday, I believe, I went before Mr. Higgins, Magistrate here, and swore out a warrant on information and belief for the arrest of Arthur Waitus for the murder of Mrs. Coker. We were still trying to find Arthur Waitus. On the 10th of May, Mr. Roy Williams, Woodrow Carter and myself went to Fairmont, North Carolina, along with a colored man named Henry Evans, of Myrtle Beach. Evans went to some place and looked for Waitus, and came back with no results. I told him a place to go. We waited nearby. In just a little while Evans came back by with Arthur Waitus in his car. We stopped him and arrested Arthur Waitus and put him in our car, Mr. Williams' car rather. We took Arthur Waitus from there to Columbia, South Carolina.

Q. Did you have the warrant with you at that time? A. Yes, sir.

Q. Did you inform him what the charges were? A. Mr. Carter read the warrant to him. I asked him if he was willing to go back to South Carolina, and he said he was.

Q. Did you talk with him on the way to Columbia? A. Some.

Q. Did you threaten him? A. No, sir.

Q. Did you promise him any inducements of any kind? A. No, sir.

Q. Make any threats against him A. No, sir.

Q. Use any force? A. No, sir.

Q. Was any statement he made to you free and voluntary? [141] A. It was, but I don't recall his making any statement on the way to Columbia.

Q. After you got to Columbia, did you talk with him there? A. Yes, sir.

Q. Did you threaten him? A. No, sir.

Q. Promise any inducements of any kind? A. No, sir.

Q. Use any force on him? A. No, sir.

Q. Did anybody else use any force or make any promises or make any threats towards him? A. No, sir.

Q. Was his statement free and voluntary? A. It was.

Q. Tell what he said, if anything?

Mr. Thompson: We would like to find out if it is any kind of admission of any kind. We would like to make a motion, and ask that the jury be excused.

Mr. Long: It is in the nature of a conversation in reference to the case.

The Court: You object upon what ground?

Mr. Thompson: I don't think he has qualified him enough to ask him prior to the statement to see if it is proper.

The Court: If you want to ask him any questions, go ahead?

Mr. Rosen: We feel, if this confession or admission was obtained under certain circumstances, we think as a matter of law it should be excluded by the Court, if it is brought out before the jury.

The Court: I am giving you an opportunity to examine this witness as to the competency of this witness [142] to bring out the statement. So far the witness has qualified.

Mr. Thompson: We do not care to argue any questions at this time, except what we have requested.

Q. Go ahead, Sheriff? A. I don't recall he made any admissions at that particular time. We talked to him about it some little while about the murder of Mrs. Coker.

Q. Did you have any conversation with him later? A. I had another conversation with him next day.

Q. Where was that at? A. Headquarters of the South Carolina Law Enforcement Division, in Columbia.

Q. At that time did you threaten him? A. No, sir.

Q. Promise him any inducements? A. No, sir.

Q. Or hope of reward? A. No, sir.

Q. Did you use any force on him? A. No, sir.

Q. Was his statement free and voluntary? A. He made no statement at that time. Everything he said at that time was free and voluntary, but he made no statement.

Q. Do you remember the conversation you had with him at that time? A. I don't remember just all the conversations we did have.

Q. When did you have another conversation with him? A. I believe it was the 15th, Mr. Long.

Q. Did he make a statement at that time? A. He made a statement at that time.

[143] Q. At that time, did you or any other officers threaten him? A. No, sir.

Q. Or promise him any inducements or hope of reward? A. No, sir.

Q. Did you use any force on him? A. No, sir.

Q. Was his statement free and voluntary? A. It was.

Q. Was he advised of his constitutional right? A. I told him on each occasion and every occasion that he did not have to say anything, and if he did say anything, it could be used against him in court and he could have a lawyer, if he wanted to.

Q. Did he make a request to see any of his friends? A. No, sir.

Mr. Thompson: We object to this, if it is in the form of an admission. We think some other questions should be asked, and that the jury be excluded. It might be prejudicial to the defendant whether it is legal or not.

The Court: The fact those same questions can be asked in regular cross examination, if the jury is not excluded, I rule that, while the Court has a right to exclude any supposed confession that is not voluntarily and freely made in every respect, if anything is shown that it was not voluntarily made, I have a right to exclude it. If the question is in doubt, it is my duty to submit it to the jury, not only whether or not the confession was actually made, but whether or not it was made freely and voluntarily. I can't see any reason why the foundation for an admission or confession should not be made in the presence of the jury, because ultimately they might have to pass on it. That is all [144] done before the confession is received. I am offering you now, if counsel wants to, the opportunity of questioning this witness with respect to whether or not any statement by the defendant was freely and voluntarily made and should be admitted to evidence.

Cross Examination by Mr. Thompson:

Q. How long had he been in the penitentiary at that time? A. Since the night of the 10th of May.

Q. This was on the 15th that he made some statement to you that was in the form of an admission? A. Partially.

Q. You had been with him and questioning him all the way from Fairmont to Columbia on the first occasion? A. Yes.

Q. That took about how long? A. I'll say about three hours. I wouldn't say how far it is.

Q. When you got to Columbia, you took him to the Headquarters of the South Carolina Law Enforcement Division? A. Yes, sir.

Q. He was questioned there? A. Yes, sir.

Q. Who questioned him there? A. Mr. Williams, Mr. Carter and myself.

Q. How long was he questioned then? A. Possibly an hour.

Q. Then he was taken to the penitentiary? A. Yes, sir.

Q. The next morning he was brought back to the same place? [145] A. That's right.

Q. He was questioned again next morning? A. I am not sure whether he was brought back next morning, he was brought back the next day and questioned.

Q. Did you, or do you know who questioned him then? A. I think about the same men—maybe Chief Brady.

Q. Do you know how long you questioned him that time? A. I am afraid I can't say exactly.

Q. Was he out there several hours? A. Yes, he was.

Q. After that was completed, was he then taken back to the penitentiary? A. Yes.

Q. The next time you saw him was on the 15th? A. That is correct.

Q. You don't know how many time he was questioned when you were not there yourself? A. I don't know of his having been questioned any time.

Q. You don't now whether he was? A. I couldn't say about that.

Q. Did he at any time have any of his conversations when no one was there? No one was there except officers? A. That's right.

Q. His mother and father were not present when he was questioned? A. No, sir.

Q. He did not have any counsel? A. No, sir.

Q. Nobody was present except officers? [146] A. That is all that particular time.

Q. So far as you know, while in the penitentiary, you don't know whether he was questioned there or not, but so far as you know, none of his family saw him, and none of his friends saw him? A. I wouldn't know that.

Q. At the time he was taken to the Constabulary, was he given his regular meals? A. He was given his regular meals each time. The South Carolina Law Enforcement Division has a mess hall, and each time we were there, with him, we had our meals there, and he also had his meals there.

Mr. Thompson: That is all he wanted to ask him. Our contention is that under this statement, he had been confined for a period of about five days, under questionings at least four different times by the Sheriff that he knew of, and on each time for several hours. He does not know how much any other times he was questioned. Under some of the decisions of our United States Supreme Court, constant questioning over a long period of time, it is not voluntary. We object to any alleged admission on his part.

The Court: I overrule the objection, and hold that it is a matter for the jury to determine whether it was taken voluntarily.

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[150] *Redirect Examination*:

A. After I got there, I imagine it was some time after three o'clock, as well as I remember, and Mr. Williams had Waitus at the headquarters of the Law Enforcement Division at the time. We talked to Waitus for awhile.

Q. At that time did anybody threaten him? A. No, sir.

Q. Or promise any inducements of any kind? A. No, sir.

Q. Or use any force on him? A. None whatever.

Q. Make any promises of any kind? A. No, sir.

Q. Was his statement free and voluntary? A. Yes, sir, it was; I told him at that time he could have a lawyer, and he didn't have to say anything, and if he said anything, it could be used against him in Court.

Q. At any time did he request any lawyer? A. He did not.

Q. At any time did he request to see any friends or relatives? A. He did not. Mr. Carter told him on one occasion—I am not sure what the date was, if he wanted any of his folks to come up there, he would be glad to tell them. He told Mr. Carter something to tell them—I believe for them to send him some clothes.

[151] Q. What happened on this last day that you related he sent for you? A. We talked to him some time.

Q. Did you inquire of him why he wanted to see you? A. I did. He said I did send, and he practically avoided the question, and we talked to him awhile then. Later on we talked to him again. It was getting late over in the evening—maybe dark.

Q. Was that steady or periodical? A. No, sir, periodical; we talked to him three or four times.

Q. All of it constituted how much time? A. I would say about an hour.

Q. Go ahead? A. Some time not long after night we were talking to him in one particular room—

Mr. Thompson: I would like for the record to show that our objection runs through all of this, too?

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[160] Q. After you had this conversation with Waitus, was that particular statement at that time reduced to writing? A. Later on it was.

Q. Do you recall about the time you talked to Johnson and he made his investigation the first time? A. The first

time was around nine o'clock—the first time I was talking to Mr. Johnson was around nine o'clock.

Q. Did it take some considerable time to talk to him and get the information back? A. I would say during all that time, the times I talked to him, and the time that elapsed, I imagine it was around two hours after he called me back.

Q. You were waiting on a message from him at that time? A. Yes, sir.

Q. Tell how you managed to get the statement reduced to writing? A. There was a call made to Mrs. Blankenship at that time.

Q. Who is she? A. She is bookkeeper and stenographer of the South Carolina Law Enforcement Division. We tried to get in touch with her, and we couldn't find her at the time, and we did find her, and she came to the headquarters of the Law Enforcement Division around twelve o'clock.

Q. Did you have to wait on her a little bit? A. Yes, sir.

Q. What transpired when she got there? A. When she got there, she took Arthur Waitus' statement in shorthand.

Q. Who told her what to put in the statement? [161] A. Arthur told her.

Q. She took it down in shorthand? A. Yes, sir.

Q. Did she reduce it to writing? A. Yes, sir.

Q. At that time, did anybody threaten him? A. No, sir.

Q. Did anybody promise or offer any inducements, hope of reward or make any threats against him? A. No, sir.

Q. Anybody use any force on him? A. No, sir.

Q. Was it free and voluntary? A. Yes, sir.

Q. Do you have the statement here? A. Yes, sir.

Mr. Thompson: Our same objection goes to this also.

Q. Is that the statement of Arthur Waitus? A. Yes, sir.

Q. Who witnessed that? A. Lt. Roy Williams, myself and Woodrow Carter, and a colored boy named Charles Blunt.

Q. Did Arthur Waitus sign it? A. He made some kind of mark.

Q. Was it read over to him? A. It was.

(The State offers statement in evidence.)

Mr. Thompson: We object to it on the ground it is not free and voluntary.

The Court: Objection is overruled.

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Cross Examination:

[169] Q. Then you went and had a warrant sworn out before Judge Higgins for Arthur Waitus on May 8th? A. That is correct.

Q. I believe two days later—May 10th, that you actually arrested Arthur Waitus? A. That is correct.

Q. He was arrested in Fairmont, North Carolina? A. That's right.

Q. At the time you went to Fairmont, you had already talked with Henry Evans—is that not true? A. Yes, sir.

Q. You received information from Henry Evans that he was in Fairmont? A. Henry told me that he thought he had gone to Fairmont.

Q. Was it your insistence that Henry Evans went to Fairmont with you all? A. It was—Mr. Williams and Mr. Carter and I.

Q. You all were the ones that got him to go? A. Yes, sir.

Q. When you all got to Fairmont you made arrangements with Henry Evans that if he went and got Waitus in the car, you all would meet him at a certain place there? A. Evans first left out and went to some place, and he was

gone for some time, and we began to wonder if [170] he was coming back, and finally he did come back, and of course, he had no information. I had a place that I wanted him to go just to see if he was there. We waited nearby, and he went, and in just a short while he came by with Waitus. We could see where he went, too.

Q. You did not have any pre-arranged plan where you would meet him in the event he found Waitus? A. Yes, he was to come right back to us. We could see Evans' car all the time.

Q. Did you all request Evans to tell Fateye his mother was sick and to come back to Georgetown? A. No, sir, we did not.

Q. Do you know whether he told him that? A. No, sir, I don't.

Q. You don't know what he told him? A. No, sir.

Q. He did not tell you anything about that? A. I am sure Evans did not tell us anything like that.

Q. He was in the car with Henry Evans? Was anyone in the car with Henry Evans, except Waitus? A. That was all.

Q. Just the two of them? A. That is all.

Q. I recall something about two other colored boys in the car or something. A. You have a better memory than I do.

Q. You are sure there was nobody in the car with Henry Evans but Waitus? A. I don't recall any others.

Q. Besides Lt. Williams, Mr. Carter and yourself, was anyone else in your car? A. There was a deputy Sheriff from Fairmont. I don't recall his name.

[171] Q. Did you take him back into town and leave him before you started on your trip back? A. Yes, sir.

Q. At that time did Arthur give you any reason to believe he was going to Georgetown? A. I don't recall now whether he did or not. I asked him if he was willing

to go back to South Carolina with the arrest warrant, but I don't recall anything about Arthur saying anything about being willing to go back to Georgetown.

Q. You don't know where he was heading with Henry Evans at the time you stopped him going out? Did you know he would meet you all there? A. Who?

Q. Arthur Waitus? A. I doubt it.

Q. You don't know that he was headed to Georgetown at the time? A. He was not headed in the direction of Georgetown.

Q. Who was driving? A. Henry Evans.

Q. He was driving to where you all were to meet Henry Evans? A. That is correct.

Q. Did you have any difficulty getting him in your car? A. No, sir.

Q. You left there and went directly to Columbia? A. Yes.

Q. You did not come by Georgetown? A. No, sir.

Q. He told you he would be willing to come on back to South Carolina? [172] A. I did not say Georgetown.

Q. You did not say Columbia? A. I did not.

Q. On the way from there to Columbia, did you advise him that he was being arrested for the murder of Mrs. Coker? A. Yes, sir.

Q. You talked to him about that some? A. Yes, sir.

Q. He denied knowing anything about it? A. He did.

Q. He never made any admission at all at that time? A. No, sir.

Q. After you got him to Columbia you took him to the Law Enforcement Division Headquarters? A. Yes, sir.

Q. Did you take him by the penitentiary first, or did you take him straight there? A. Took him straight to the headquarters of the South Carolina Law Enforcement Division.

Q. You questioned him there possibly an hour? A. Yes, sir.

Q. Did you take him to the penitentiary? A. I don't recall whether I took him that particular time or not. I went with Mr. Williams on some of the occasions and some I did not.

Q. The next time you saw Arthur Waitus was the following day? A. That is right.

Q. At that time he still continued denying anything about it? Do you know if he was returned to the penitentiary at that time? A. Yes, sir.

Q. Do you recall who took him? [173] A. I don't remember about that.

Q. What was the reason for questioning him out there at the Law Enforcement Headquarters rather than the penitentiary? A. Frankly, I don't know if there was any particular reason—only convenience.

Q. His convenience? A. Our convenience mostly.

Q. Was he questioned in the same room in the Law Enforcement Headquarters that you had him out there in? A. No, sir; a couple of different rooms.

Q. Sometimes you would question him in another room and then in another? A. That is right—sometimes somebody else would be in another room.

Q. At the time Charles Blunt was there, did you question them in separate rooms, or did you have them in the same room? A. Separate and together, too.

Q. When was the next time after that date that you saw and questioned Arthur Waitus? A. As well as I remember it was the 15th of May.

Q. Did you see him any more after that until the 21st of May? A. No, sir.

Q. The only times that you questioned Arthur Waitus was on the way from Fairmont to Columbia for a short while, that same night in the Headquarters, and for a while

the next day at the headquarters and on May 15th and again on May 21st? A. I believe that is right; I am not definite about that. It could be that I did talk to him on the day after—on the 16th probably.

[174] Q. You could have talked to him on the 15th and on the 16th? A. Yes, I think possibly, but I don't think so. I am not sure about that.

Q. You would not stay in Columbia after you questioned him? A. That is right.

Q. When you questioned him, you returned to Georgetown? A. That is right.

Q. You don't know who questioned him when you were not in Columbia? A. Of course I would have no way of knowing, I did not hear of any.

Q. Didn't you testify one time that you heard of one occasion you knew of? A. I did not hear of any questioning. I know of one occasion that Mr. Williams told me he went out there and talked to Arthur and Charles Blunt. That is the only time he told me he had seen him.

Q. You don't know who else questioned him there or at the penitentiary? A. I wouldn't have any way of knowing.

Q. I believe you stated this morning from your investigation of the footprints, it couldn't have possibly been two people connected with this or out in that field? A. I should say two men instead of two people. No.

Q. You did have Arthur Waitus and Charles Blunt both under arrest? A. I carried Charles Blunt up there to talk to Arthur; then I also was holding him for further investigation. I didn't have any warrant for Charles.

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[182] Q. Do you know whether Arthur Waitus has any education or not? A. Arthur Waitus doesn't have any education to amount to anything, I am sure.

[183] Q. Can he read or write? A. No, sir; I don't think so.

Q. He can't read or write his name? A. I don't think so.

Q. Wouldn't you consider him illiterate? A. He is illiterate.

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Testimony of Mrs. Toccoa Blankenship

[188] Mrs. Toccoa Blankenship, a witness on behalf of the State, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination by Mr. Long:

Q. With whom are you employed, Mrs. Blankenship? A. The State of South Carolina Law Enforcement Division.

Q. Were you so employed in May, 1951? A. Yes, sir; I was.

Q. About the 21st or 22nd of May, did you have occasion to take a statement from Arthur Waitus, otherwise known as "Fateye"? A. Yes, sir; I did.

Q. Does this recall to your mind the date that happened? A. Yes, sir.

Q. Did you take that statement there? A. I did.

Q. Explain the circumstances under which you took it? A. I took the statement in shorthand as the subject gave it to me, and later I transcribed it.

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[189] Q. Are these the original notes you took down? A. They are the original notes.

Q. Did you transcribe this statement from these notes? A. I did.

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Q. I would like for you to take your notes and read to the jury just what you have on the book there? [190] A. I have "5-22-51. From Arthur Waitus. Personally appeared before me Arthur Waitus, colored, male, who, after first being duly sworn says:

Sheriff Cribb: Now Arthur, what you say may be used against you in Court. You are making this statement free and voluntary?

Arthur Waitus: Yes, sir.

Sheriff Cribb: Now, go ahead with your statement." Do you want me to read the whole thing?

Q. Yes, mam. A. "My name is Arthur Waitus. I am —I will be 33 years old the 14th of August coming. I live in Georgetown, South Carolina, in Georgetown County.

"On Monday night, April 30th, 1951, about 9:00 o'clock, I was walking down Highmarket Street and I cut across Screven Street. I walk on further down and catch this lady, who I heard some people say later that her name was Mrs. Coker. I catch her by Mr. Miller's house. I caught this lady by the throat and she holler one time, and a dog barked one time, and I dragged her through the back yard to the wire fence. I stopped at the wire fence and I took her blouse, pants, girdle, sanitary belt and kotex off. After I took these clothes off I put my ear to her heart and I knew she was dead. I hadn't meant to kill the lady. I found out there too that she was sick. My intentions were to have intercourse with her, but after I found out she was

sick I did not. I laid her down in the field and left her there while I went to get a tub at the colored person's house. I carried the tub and sat it down by the wall, then I went back and got her and carried her to the wall. I put her up on the wall and went down about ten feet where the wall was lower and I crossed and I came back and reached up and took her [191] down off the wall and while I was taking her down her head fell down and hit a tombstone. I dragged her down to the Sunday School Building, which is the back of the Parish House. This is about 100 yards from the wall. I put her beside the side of the steps in the corner. I looked to see if I could get in the window, but I found I could not get in and I found the door open to the furnace room. I went back and got her from the corner and carried her down the steps and laid her on the cot on the left-hand side with her head facing the door. After I put her on the cot, I came outside and found a newspaper and took it and went back and laid it over her face. I don't know why I did that. I pulled her rings off and decided not to keep them, and I put them back on her hand. I think her watch was pulled off near the wire fence. I have not seen it since. I closed the door and came out and came down Highmarket Street to Queen Street and then to Duke Street and went on down to Cannon.

"I hid the lady's clothes in an open lot on Cannon Street under some sawdust. This is about 150 or 160 feet from my house. After that I went on home. I went to bed. This was around about 10:00 to 11:00 o'clock. I started about 9:00 o'clock and I got home about 10:00 or 10:30.

"I stayed hid out in Georgetown until about the following Sunday evening, 'cause I understood that the law was looking for me. I went with Henry Evans to Myrtle Beach. I spent one night at Arthur Simmon's house at Myrtle Beach. I left there about 7:00 o'clock on the bus

and went to North Carolina. Henry Evans loaned me $1.00 and Arthur Simmons loaned me fifty cents. I was later arrested in North Carolina by Sheriff Cribb of Georgetown County, Deputy Sheriff Woodrow [192] Carter and Lt. Roy F. Williams. When they arrested me I was in the car with Henry Evans and I was going back to Georgetown. I told the officers that I was going back to Georgetown. These officers told me to get in their car and they would take me back to Georgetown, which I did. They brought me back to South Carolina.

"At first I told the officers that another fellow was in this with me, but tonight I decided to tell the truth and I told them I was in this alone and I told them where I had the clothes. I am telling this and I know that it will be used in Court against me.

"I make this statement in the presence of Sheriff Garris Cribb of Georgetown County, Deputy Sheriff Woodrow Carter, Lt. Roy F. Williams and Mrs. Toccoa Blankenship of the South Carolina Law Enforcement Division and Charles Blunt, a colored boy.

"I make this statement of my own free will and accord, without reward, or hope of reward, without duress or intimidation. All of the above is the truth, the whole truth, and nothing but the truth, so help me God.

"The lady has read this to me, and it is true".

Q. Mrs. Blankenship, are all of these statements his exact words, or are some parts paraphrased? A. In the body of his statement, other than "personally appeared before me Arthur Waitus, Colored, male, who after being first duly sworn says:"

Q. The others are his exact words down to the paragraph which starts "I make this statement in the presence of: Sheriff Garris Cribb, and I make this statement of my own free will and accord in the presence of the officers"—other than those two paragraphs are the rest of it his exact words? [193] A. His exact words.

Q. Do your notes correspond exactly with the statement? A. Yes, sir; they will have to, because this was transcribed from my notes.

Q. Was that read over to him? A. Yes, sir.

Q. Did he make his mark in your presence? A. Yes, sir.

Cross Examination:

* * *

[195] Q. Were you closed up in the room with the defendant? After Arthur Waitus answer the Sheriff's question at the beginning of this statement and the Sheriff said, "Go ahead with your statement"—from that point to this next to the last paragraph over here where it says: "I make this statement of," etc., you and Arthur were the only two people, or he was the only one talking to you, and no one was talking to him at that time he made that statement? A. No.

Q. These are his identical words? A. They are.

Q. Have you taken many statements of this type? A. I suppose I have taken hundreds of them.

Q. Have you taken them from substantially educated people and those who are illiterate? A. Yes, sir.

[196] Q. What opinion do you have of Arthur Waitus'—is he an illiterate or educated person, or what would you say? A. I would say he is very illiterate.

Q. Is this a usual statement made by an illiterate person or an unusual one? A. It wouldn't be unusual.

Q. Do you think a person of his education and background would make the statement: "My intentions were

to have intercourse with her"? That would be a statement of a person of his education to make? A. That is what he said.

Q. In making this statement, I wish you would refer to your notes there. In reading your statement, I thought you said he laid her down by the cemetery, is that what your notes say? A. I will have to find it, Mr. Rosen. No, sir; "I laid her down in the field and left her there while I went to get the tub".

Q. In reading it you said cemetery? A. I am sorry, he said he laid her down in the field.

Q. The Sheriff testified that you added this statement: "I make this statement in the presence of the Sheriff, etc". and, "I make this statement of my own free-will". Did you add that to his statement? A. Yes, sir; I did.

Q. How do you account for it being in your shorthand notes? A. I wanted a complete statement in my shorthand notes. I added it to the shorthand notes and also to the statement.

Q. Those are not his words? A. No, sir.

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[217] (The States rests its case at this point.)

(The Jury retire to their room, and the following transpires in their absence):

Mr. Rosen: We would like to make a motion for directed verdict on the grounds that, excluding the confession, which was introduced by the State, the evidence will not be sufficient for the case to go to the jury, and we feel that the Court erred in admitting the confession. If the confession is excluded, there would not be sufficient evidence, and excluding that, you would have directed a verdict.

The Court: The motion is overruled.

(The Jury return to their seats.)

DEFENSE

ARTHUR WAITUS, being duly sworn to speak the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination by Mr. Grimes:

Q. Tell the Court your name? A. Arthur Waitus.

Q. How old are you, Arthur? A. Thirty-five.

Q. Do you know when your birthday is? A. 14th of August coming.

Q. Where would you consider home before you were arrested in this case? A. 517 Duke Street.

Q. In Georgetown? A. Yes, sir.

Q. Where were you born? A. Georgetown.

Q. What is your mother's name? [218] A. Alice Waitus.

Q. What is your father's name? A. Jack Waitus.

Q. When you lived in Georgetown, who did you live with? A. With my mother and daddy and sister.

Q. Anyone else? A. My brother-in-law, Sam James.

Q. How much education have you had? A. Went far as the first grade.

Q. Can you read and write? A. No, sir.

Q. Where were you working, or had you been working prior to the time you were arrested in this case? A. Rion Stevedore Company.

Q. Do you remember Monday preceding Tuesday that they found this lady's body in the Parish House—do you remember that particular Monday? A. Yes, sir.

Q. Do you remember what year it was in? A. 1951.

Q. Do you know what time of year it was? A. I think it been around about summertime—it been warm.

Q. On this particular Monday preceding Tuesday that they found this lady's body—do you remember what you

did that morning? Do you remember whether you went to work? A. I went to work that morning.

Q. What time did you get up? A. Got up time enough to get to work at eight o'clock.

Q. That is over at Rion's Stevedore Company? A. Yes, sir.

[219] Q. What is the Rion Stevedore Company? Or, where is Rion Stevedore Company? A. Waterfront next to Charleston.

Q. How far from your house? A. Around about two miles.

Q. You say got up time enough to get to work at eight o'clock—did you work that day? A. That's right.

Q. What time did you get off from work? A. Left there about four o'clock.

Q. What time did you quit work? A. Four o'clock.

Q. You left the dock at four? A. I left the dock at four.

Q. Were you paid off that day? A. That's right.

Q. What kind of work did you do over there? A. I stacked paper.

Q. In what? A. Down in the hatch-hole of a ship.

Q. You say you left the dock around four o'clock that day? A. Yes, sir; four o'clock.

Q. That was four in the afternoon? A. Yes, sir.

Q. How did you leave the dock that day? A. I left in a cab.

Q. Who left with you, if anybody? A. Bary Gardner.

Q. Who else? A. Joe Ward.

Q. Anyone else? A. Ben Austin.

Q. Anyone else? [220] A. Fish Bulton.

Q. Who is he? A. That was the taxi driver.

Q. Did anyone else leave with you you can remember? A. Not as I can remember.

Q. Where did you go in this taxicab? A. Went on down to Minnie Sumter's house.

Q. Where is that? A. On Highmarket Street.

Q. Whereabouts on Highmarket Street? A. That is Meeting—the boulevard.

Q. You went over to Minnie Sumter's house in company with these same people you named? A. Yes, sir.

Q. What did you do at Minnie Sumter's house? A. I got out.

Q. Did anybody else get out with you? A. Joe Ward got out.

Q. Anyone else get out? A. Ben Austin.

Q. How about Bary Gardner and Fish Bulton? A. I think Bary got out.

Q. How about the cab driver? A. I think he went back.

Q. What was the reason for going there? A. I went over there to see a boy.

Q. Whose boy? A. Minnie Sumter's son.

Q. What did you want to see him about? A. I owed him some money.

Q. You left the dock at four o'clock and you went straight to Minnie Sumter's house? A. Yes, sir.

[221] Q. What did you do after you got to Minnie Sumter's house? A. I had a half pint of whiskey I drank.

Q. Who helped you drink the whiskey? A. Me and Joe Ward and Ben Austin.

Q. You all drank the half pint of whiskey? A. Yes, sir.

Q. What did you do then? A. Me and Joe Ward left there.

Q. Started where? A. Stopped in Almena Harrell and got a package of meat skins.

Q. Who got the meat skins? A. Joe Ward.

Q. Where is her place? A. On the corner of Meeting and High Market.

Q. How far is that from Minnie Sumter's house? A. About half a block.

Q. That is going in this direction from Minnie Sumter's house? A. Yes, sir.

Q. After you stopped at Harrell's shop, what did you do? A. After we got the meat skins, we went home.

Q. Did Joe Ward live with you, or did he live anywhere near you? A. On the same street.

Q. You did walk in the direction of home together? A. Yes, sir; that's right.

Q. After you got home, what did you do? A. I took a bath.

Q. After you bathed, what did you do? A. I put on my clothes.

Q. Do you know what kind of clothes you put on? [222] A. Brown pants and pin striped shirt.

Q. After you dressed, what did you do after that? A. Eat supper.

Q. Who fixed supper for you? A. My sister.

Q. After that, what did you do? A. I decided to went on back down town.

Q. You left the house? A. Yes, sir.

Q. What time was that? Was the sun up or down? A. The sun wasn't quite down yet.

Q. What do you fix the time at? A. About six-thirty—something like that.

Q. Did you have a hat on when you left the house? A. Brown hat.

Q. Where did you go when you left the house? A. Went to Almena Harrell's shop again.

Q. Where did you say you live? A. On Duke Street—517.

Q. Almena Harrell's shop is where? A. Corner of Meeting and High Market.

Q. Did you walk away from Screven Street, or towards it? A. Walked towards it.

Q. Towards it or from Screven Street? A. From it.

Q. Did you make any stops in between your home and Almena Harrell's shop? A. No, sir.

Q. Did you go in her shop? A. Yes, sir.

Q. Who was in there? Do you remember? A. Sarah Ford.

Q. Who is she? [223] A. Almena Harrell's daughter.

Q. Who else did you see in there? A. Hattie Mae.

Q. Who is she? A. I think that's a little girl that Almena Harrell is raising.

Q. Was anybody else in there? A. Lucretia Ford.

Q. Who is that? A. Sarah's daughter.

Q. Anyone else in there? A. Bubber Ford.

Q. Who is that? A. Sarah's little boy.

Q. Anyone else? A. Not as I remember.

Q. How long did you stay there that time? A. I don't know exactly. I stayed there a good little while—stayed about half an hour, I suppose.

Q. Did you see John Moultrie in the shop along about then? A. Yes, sir.

Q. When did he come in the shop? A. About fifteen or twenty minutes afterwards.

Q. He came in after you were there awhile? A. Yes, sir.

Q. Did you leave the shop after he came in, or did he leave before you? A. I think I left the shop before him.

Q. Where did you go then? A. Went to Mrs. Minnie Sumter's house.

Q. Did you go in Minnie Sumter's house? A. I stopped outside at the gate and talked to her.

Q. You talked to Minnie Sumter? [224] A. Yes, sir.

Q. Did you see anyone while you were talking to Minnie Sumter? A. James Colleton come out there.

Q. Did you speak to him. A. Yes, sir.

Q. Did he speak to you? A. Yes, sir.

Arthur Waitus—Direct

Q. Minnie Sumter's house is about half way the block between Meeting and Bay Street? A. Yes, sir.

Q. What did you do when you left Minnie Sumter's house? A. I stopped by next at Charlotte Deas.

Q. Charlotte Deas or Charlotte Green? A. She used to be a Green.

Q. You don't know what her name is now? A. No, sir.

Q. What was the reason you stopped there? A. To talk to Willie Smith and Robert Smith.

Q. Charlotte Green, where is her house in connection with Almena Harrell's house? A. Right side Minnie Sumter's house.

Q. It is the next house to Minnie Sumter's house? A. Yes, sir.

Q. Which side of Minnie Sumter's house was she on? Was it on the side towards the shop or on the side towards East Bay Street? Which side is Charlotte Green's house? A. It is facing the front.

Q. Do you have to pass Charlotte Green's house going to the shop? A. That's right.

Q. You stopped there? [225] A. Yes, sir; that is right.

Q. Did you go in the house? A. No, sir; I stopped out in front.

Q. Was anyone in front there? A. Yes, sir.

Q. Who was in front? A. George Miller, Willie Smith and Robert Smith.

Q. They were out there in front? A. Yes, sir.

Q. What were they doing? A. I think they was supposed to be a meeting, and he were waiting on the rest of the fellows to come up.

Q. They were sitting out in front talking? A. Yes, sir.

Q. Did you stay with them awhile? A. Yes, sir; a little while.

Q. Did anyone else come up while you were talking to them? A. If anyone come up, I don't remember, outside of Jim Frazier.

Q. That is Jim Frazier that works in the barber shop? A. Yes, sir.

Q. What happened after Jim Frazier come? A. Jim Frazier come and spoke to us and went on in the house.

Q. What happened then? A. The boys decided to have a meeting with what they had. I thought someone say it was a quarter to nine at the time, and I left.

Q. Did they go in the house? A. Yes, sir.

Q. And you left? A. Yes, sir.

[226] Q. Where did you go then? A. Went back to Almena Harrell's shop.

Q. How far is that from Charlotte's house? A. Ain't so far, just about half block.

Q. When you got back, did you go in Almena Harrell's ship? A. Yes, sir.

Q. Did you see anyone in there? A. Yes, sir.

Q. Who? A. See Georgia Mae.

Q. You mean Hattie Mae? A. Yes, sir.

Q. Who else? A. Lucretia Ford.

Q. Who else? A. Sarah Ford.

Q. Who else? A. The little Ford boy.

Q. Who else? A. John Moultrie.

Q. Do you remember seeing anyone else? A. I don't remember seeing anyone else.

Q. What happened when you got there? What did you do after you got in the shop? A. Had a bottle of beer.

Q. Anything else? A. Played the piccolo for them little children.

Q. Did you buy anthing else while there? A. I called for a package of cigarettes. They didn't have any. I sent Lucretia to the drug store for a package of cigarettes.

Q. They didn't have any in there? A. No, sir.

[227] Q. They sent Lucretia for cigarettes? A. Yes, sir.

Q. What drug store did she go to? A. Dr. Mahon's, I think.

Q. Where is that? A. Corner of High Market and Front.

Q. Anything happened after that? A. After she brung the cigarettes back, I give her a dime, and her little brother wanted something, and I give him a dime.

Q. After that what happened after that? A. I stayed in until they closed up.

Q. Do you know what time they closed up? A. I think they said it was nine-thirty and they just as well close up—business was dead.

Q. Did they close up right after you left? A. They closed up same time I been there.

Q. You went out ahead of them? A. Yes, sir.

Q. Where did you go from there? A. Went home.

Q. How did you go home, which direction did you go home? A. High Market Street.

Q. You walked down High Market Street? A. Yes, sir.

Q. Did you meet anybody? A. I met Charles Blunt.

Q. Where did you see him? A. Corner of High Market and Cannon Street.

Q. Did you have any conversation with him? A. Talked a little bit.

Q. Do you remember what you said? A. Talked about working.

[228] Q. Did anything else transpire between you all? A. No, sir.

Q. What direction was he walking in? A. Going the same direction I come from.

Q. Was he coming from the direction of Screven Street? A. Yes, sir.

Q. Where did Blunt live at that time? A. Prince Street.

Q. Was he going the direction of his home or not? A. Yes, sir; he was.

Q. After you saw Blunt, what did you do? A. I went home.

Q. How did you go home? How did you get to your house? A. I was walking.

Q. You walked from High Market to Cannon Street? A. Yes, sir.

Q. Then how did you go? A. Walked Cannon to Duke.

Q. Then Duke on up to your home? A. Yes, sir.

Q. Was anyone awake? A. My mother.

Q. After you got home, what did you do? A. Pulled off my clothes and went to bed.

Q. Did you stay in bed all night? A. That's right.

Q. What did you do the next morning? A. Tuesday morning?

Q. Yes, that would be Tuesday morning. A. I went up town.

Q. Did you go to work? A. Yes, sir; I went to work.

[229] Q. Did you work that day? A. I didn't work that day.

Q. Was there a boat in the harbor? A. The boat been there the same ship I worked on on Monday.

Q. Did you work regular gang or the extra gang? A. I worked the extra crew.

Q. You say you went up there to try to see about going to work again that Tuesday morning? A. Yes, sir.

Q. About what time did you get there? A. I got there time enough to go to work at eight o'clock.

Q. Did you leave the dock that morning all together with anybody? A. That's right.

Q. Who? A. Me, Charles, Blunt, Ben Austin, Frank Williams and Laurin Ford.

Q. Anybody else? A. I don't know the fellow that drive the car.

Q. Where did you go that Tuesday morning? A. He put us out the corner of High Market and King Street.

Q. How long did you stay there? A. Not very long.

Q. Who got out with you at High Market and King Street? A. Me and Charles Blunt and Frank Williams, Ben Austin and Laurin Ford.

Q. Where did you go? A. They kept on down King Street to a barber shop. Me and Charles Blunt went to Barnes Place.

Q. Is that Sam Barnes? [230] A. Yes, sir.

Q. About what time did you get home that day—do you know? A. After I left Sam Barnes Place, I went to a girl's house they call Queen White, and after I leave there I went home.

Q. Did you work any more that week? A. No, I didn't.

Q. When did you leave Georgetown? A. I left Georgetown on Sunday.

Q. Sunday following this Monday? A. Yes, sir.

Q. Tell how you left Georgetown—what way you left Georgetown ? A. I been up on the highway, corner Orange Street and King Street, right in that block there.

Q. You were on the highway? A. That's right.

Q. What highway? A. Highway 17.

Q. You mean Church Street out here? A. Yes, sir.

Q. That was on Sunday? A. Yes, sir.

Q. What time of day was it? A. I put it about around three o'clock.

Q. Was it in the afternoon? A. Yes, sir.

Q. You were standing out there on the highway? A. Yes, sir.

Q. Did a car stop for you? A. I been to the highway hitch-hiking, and two fellows come by.

Q. Did a car stop for you? [231] A. That's right.

Q. Who was it? A. Henry Evans.

Q. You got in the car with Henry Evans? A. That's right.

Q. Where was he headed? A. Headed to Myrtle Beach.

Q. Did you ride to Myrtle Beach with Henry Evans? A. Yes, sir.

Q. Did you pick up anybody else? A. Two or three boys.

Q. Where did you pick them up? A. Picked them up down by the station.

Q. They were colored boys? A. Yes, sir.

Q. Did they go all the way to Myrtle Beach? A. They got off at Furney Beach.

Q. You went on to Myrtle Beach? A. Yes, sir.

Q. Where did you go after you got there? A. Went to Arthur Simmons' house.

Q. How long did you stay at Simmons' house? A. I spent the night there.

Q. Did you eat anything there? A. Yes, sir.

Q. When did you leave Myrtle Beach? A. Monday morning.

Q. Monday morning following Sunday you got there? A. Yes, sir.

Q. How did you leave Myrtle Beach? A. I was planning to catching the bus that left there. The bus pulled out before I got up, and Henry Evans run the bus down and caught it.

[232] Q. Did you leave wearing the same clothes as the ones you wore when you got there? A. I was wearing overalls and a pin striped shirt. After I got to Myrtle Beach Henry got me pants with a white shirt.

Q. That was what you left Myrtle Beach wearing? A. That's right.

Q. Was that pin striped shirt you had on, was that the same pin striped shirt you had on Monday night? A. That's right.

Q. Where did you go after you got on the bus? Where did you go? A. Went to Conway.

Q. Where else? A. Mullins.

Q. Where else? A. Marion.

Q. Where else? A. Marion back to Mullins.

Q. Then where? A. Fairmont.

Q. Is that North Carolina or South Carolina? A. Supposed to be North Carolina.

Q. Where did you go after you got to Fairmont? A. Went to my grandmother's house.

Q. Is that in the city? A. Right in the town.

Q. What is your grandmother's name? A. Rose Ladson.

Q. Where did you go after you got to your grandmother's house? A. I was just staying around.

Q. Where is your grandmother now? A. She dead now.

[233] Q. When was the next time you saw Henry Evans? A. I didn't see Henry Evans until Thursday afternoon, I reckon.

Q. That was Thursday after you got to Fairmont? A. That's right.

Q. Under what conditions did you see him? How did you see him? A. He come up to my aunt house, he and my uncle, and my aunt been in the house, and he and my uncle and me was sitting down on the porch talking. Two North Carolina boys come up and start talking. I know 'em, 'cause I raise up round there.

Q. What happened then? A. He come up and got me in the car and went around Pine Street, and said, I got something to tell you. He told me my mother was on the point of death to come on back home. I come on back to my aunt's house and eat supper. He asked me if I want to drive. My aunt say, "Don't get behind the wheel, the cops will get you for driving." He drive away. When he got on the highway and started to Georgetown, there was Mr. Carter and Lt. Williams and Sheriff Cribb, and they blowed the horn, and Henry pulled up on the side.

Q. You got in the car because he told you your mother was sick and at the point of death? A. That is what Henry told me. I was supposed to be on my way to Georgetown.

Q. You say it was the Sheriff and Mr. Carter out there? A. Yes, sir; Lt. Williams, and a North Carolina cop. I didn't know him.

Q. They stopped you? A. Yes, sir.

[234] Q. What did they say when you stopped? A. They asked me where I was headed. I told them I headed to Georgetown, and they said jump in and we will take you to Georgetown.

Q. After you got in the car, with them, where did you go? A. I went back in the town and put out the North Carolina cop, and then we started on the way to Columbia.

Q. They took you to Columbia? A. Yes, sir.

Q. Did they tell you you were under arrest when you got in the car? A. They didn't tell me anything.

Q. They didn't tell you you were under arrest? A. No, sir; no, sir; they didn't mention nothing to me.

Q. Did they talk to you at all about going back to Columbia? A. Mr. Carter started to say something to me, but the Sheriff stopped him. They didn't have nothing to say to me going to Columbia.

Q. Do you know what extradition means? A. No, sir; I don't know what that means, because I didn't hear that.

Q. You didn't hear anything about extradition? A. No, sir; I ain't heard that.

Q. Do you know what time you got to Columbia? A. It was pretty late.

Q. Where did you go when you got to Columbia? A. To the Stabulary Quarters.

Q. Did they question you? A. Yes, sir.

Q. How long? [235] A. About two hours.

Q. Then what did they do after that? A. Took me to the State Pen.

Q. Did they come and get you the next day? A. Yes, sir.

Q. Where did they take you that morning? A. Back out there.

Q. Where? A. To the Stabulary.

Q. Did they question you that day? A. Yes, sir.

Q. Did they miss any day questioning you the whole time you were up there until you signed the paper? A. I been questioned in the penitentiary by Lt. Williams.

Q. Did they question you on Saturday? A. Yes, sir; all through the week.

Q. Were you ever questioned in the penitentiary? A. I was questioned about twice in the Captain's office.

Q. Who questioned you there? A. Lt. Williams.

Q. All the rest of the times, where would they question you? A. At the Stabulary.

Q. How long would they keep you out there? A. Two hours or three hours.

Q. On the last day, on the day they had you put your mark on this paper, what time did they come and get you that morning? A. They come and got me that morning before I eat breakfast. I ain't even eat no breakfast.

Q. Where did they take you—back out there? A. Yes, sir.

[236] Q. To the Constabulary Headquarters? A. Yes, sir.

Q. Did they start questioning you that day? A. Yes, sir.

Q. How did they treat you—good, bad or how? A. Pretty rough.

Q. Prior to that time, you were there, how had they been treating you? A. Rough.

Q. They had been treating you bad? A. Yes, sir.

Q. How did they treat you when they first came and put you up there? A. Pretty good.

Q. Did they gradually get harder on you? A. Yes, sir.

Q. Did they ever strike you?

Mr. Long: I object to him leading his witness. I'll withdraw that.

Q. Were you ever struck or physically mistreated? A. Not until that time.

Q. What happened to you that time? A. Beat me.

Q. What did they hit you with? A. Straps and black jack. I got a knot in my head right now.

Q. How many times did they hit you with the strap? A. Several times.

Q. How about the black jack? A. I think about twice.

Q. This particular day, did you see Charles Blunt up there when you signed this paper? A. Charles Blunt was up there.

[237] Q. Did anything happen between you and Charles Blunt that day? A. Yes, sir.

Q. What happened? A. They put me and Charles Blunt in a room, and we start fighting.

Q. Who won the fight? A. Charles did.

Q. Who was present? Was anyone near or around there when you were fighting? A. Yes, sir.

Q. Who? A. Woodrow Carter and several more of them.

Q. Who put you two in the room? A. Mr. Woodrow Carter and the rest of 'em.

Q. You said somebody struck you with a strap—do you know who that was? A. Yes, sir; I would know him if I saw him, but they ain't brung him out. They don't never bring him out. I ain't see him no where in this Court House.

Q. Did you have anything to eat on this day you were questioned? A. They give me a peanut butter and crackers that morning.

Q. What morning? A. After this had been signed.

Q. What time did you sign this thing? Day time or night time? A. Been around about four o'clock.

Q. In the morning? A. Yes, sir.

Q. That is the day following the day you went there? A. Yes, sir.

Q. You signed this thing early in the morning? [238] A. Yes, sir.

Q. You say you got something to eat? A. Yes, sir.

Q. What did you get? A. Crackers and peanut butter.

Q. Did you have anything to drink? A. Coco-Cola. I couldn't eat then.

Q. At the time they picked you up at the penitentiary until you had the coco-cola and nabs, you didn't have anything to eat? A. Not a thing.

Q. Did they ever say anything to you about you could have a lawyer? A. No, sir.

Q. You don't remember them saying anything to you at all? A. They didn't say nothing about no lawyer until we started back to Georgetown.

Q. When was that? A. Coming back to Court.

Q. That is for the first trial? A. Yes, sir.

Q. They told you you could have a lawyer? A. Yes, sir.

Q. Up to that time they didn't say anything about you could have a lawyer? A. They didn't say nothing.

Q. Did they say anything about Constitutional rights? A. They ain't say that.

Q. That it could be used against you? A. They done threat beating me when that thing happened.

Q. What is the reason you signed that thing? [239] A. By the Law Enforcement.

Q. Were you afraid at the time you signed it? A. Yes, sir.

Q. All this time they were threatening you? What sort of questions did they ask you? A. They would ask me if I killed that woman.

Q. What else did they ask you? Did they ask you about blood in the Parish House and weeds? A. The Sheriff did.

Q. Did you know this lady that they are talking about that was killed? A. I didn't even know her.

Q. Did you do this thing? A. No, sir.

Q. Are you sure you did not? A. Yes, sir.

Q. Do you know anything about who might have done it? A. I don't know anything about it.

Cross Examination by Mr. Long:

Q. That is all you know about it? A. Yes, sir.

Q. You say you were working down on the boat on the ship? A. Went to work there Monday.

Q. Who were you working with? A. Rion Stevedore Company.

Q. How long were you working with those people? A. Around six months.

Q. Around six months? A. I put it at that.

Q. How much were they paying you a week? [240] A. I don't work by the week.

Q. How much would you average a week? A. According how much paper you can put on the ship.

Q. Can't you give an idea how much you made a week? A. I can't estimate that.

Q. As much as $10.00 a week? A. Sometimes I made $10.00 a day.

Q. You worked on Monday? A. Yes, sir.

Q. That is the Monday before Mrs. Coker's death? A. I went to work Monday.

Arthur Waitus—Cross

Q. You heard about her death? A. Yes, sir.

Q. Had you worked regularly the week before that? A. Yes, sir; when a ship come in.

Q. How many days did you work that week? A. According to how the ship come in.

Q. How many days did you usually work? A. Sometimes probably two or three days—probably two days or a day.

Q. You worked on Monday? A. Yes, sir.

Q. No question about that? A. No, sir.

Q. You went back and got you some liquor, after you got off? A. Yes, sir.

Q. You drank some beer that night? A. That's right.

Q. When you started home, you started home, you claim, about what time? A. I left that place about nine-thirty.

[241] Q. That is about fifteen minutes of the time that Mrs. Bramlett says she heard a scream there? A. I don't know nothing about it.

Q. If she says it happened between nine-fifteen, you claim you left at nine-thirty—that would be about right? A. I don't know about that—I left at nine-thirty.

Q. Did you look at the clock when you started home? A. No, sir.

Q. Could it have been a little more than nine-thirty? A. It is possible.

Q. How many blocks were you from the Miller home—where they claim Mrs. Coker was attacked? How many blocks would you say you were from the Miller home when you started home? A. You mean the place what I been at?

Q. Yes. A. About three blocks and a half.

Q. How far is that, or how far is your home, where you were living, from the Miller Home? A. About two blocks and a half.

Q. You had to more or less go by Mrs. Miller's home? A. No, sir.

Q. How close did you get to Mrs. Miller and Mr. Shep Thompson's home? A. I got to my home before I got to anybody else home.

Q. If you had went by their home, how long would it take you to get there? How many blocks from your home to Mr. Shep Thompson's house? A. I don't know. I put it to be around two block.

Q. What did you do Tuesday? A. What did I do Tuesday?

[242] Q. You heard me? A. I went back to work.

Q. Did you work that day? A. No, I didn't.

Q. Did you see Chief Nobles on Tuesday? A. I did.

Q. Did you talk to him? A. I stopped up there by him by Barnes Place.

Q. Did you talk to him? A. He didn't say nothing to me.

Q. Did you talk to the Sheriff or any of his deputies? A. No, sir; I didn't.

Q. Where were you on Wednesday? A. In town.

Q. What part of town? A. Georgetown.

Q. Who saw you then? A. Plenty of people saw me.

Q. Where were you on Thursday? A. In Georgetown.

Q. You didn't work that day? A. No, sir.

Q. Where were you Friday? A. Georgetown.

Q. You didn't work Friday? A. No, sir.

Q. Where were you Saturday? A. In Georgetown.

Q. You didn't work that day? A. No, sir.

Q. On Sunday you left here? A. Yes, sir.

Q. Started to North Carolina? [243] A. Yes, sir.

Q. Spent the night in Myrtle Beach? A. Yes, sir.

Q. Caught a bus from there to Fairmount, N. C.? A. Yes, sir.

Q. What were you going to North Carolina for? A. To see my grandmother.

Q. How long since you had seen her? A. About ten years.

Q. Why did you want to see her? A. She was sick.

Q. Did you write her? A. Yes, sir.

Q. How long had she been sick? A. She was sick two or three years.

Q. Why did you have to go to the Beach to catch a bus to Fairmont, N. C.? A. Sir.

Q. Didn't you hear what I said? If you are going to Fairmont from Georgetown, why would you go to Myrtle Beach? A. I still have to go by there, if I catch the bus.

Q. Isn't it closer to go to Conway and Conway to Marion? A. It ain't no cheaper.

Q. Isn't the distance from Conway to Myrtle Beach the distance it is more? A. I don't believe it is much further.

Q. Isn't it a fact you hid out all that week and you wanted to get away before anybody saw you leave? A. No, sir.

Q. Nobody saw you leave? A. They should—it was big day.

[244] Q. You say when you got to Columbia was on what day? A. They arrest me on Thursday.

Q. You went to Columbia? A. That's right.

Q. Did they talk to you on the way up there? A. They didn't have any talking to me.

Q. Did they tell you when they caught you and brought you to Columbia what they were investigating? A. After they got me to Columbia, they talked to me.

Q. Who did they tell you was killed? A. Mr. Cribb told me it was a woman named Mrs. Coker.

Q. That was a little while after you left here? A. That was to Columbia.

Q. You denied knowing anything about that? A. That's right.

Q. Did you tell them you could prove by Charlie Blunt where you were that night in question? A. Blunt gone home.

Q. Did you tell the officers you could prove by Charlie Blunt? A. He left me and go on.

Q. Did you tell them that? A. Yes, I told them that.

Q. Told them you could prove by Charlie Blunt? A. Yes, I told them that; they ask me if I met anybody going home, and I told him Charlie Blunt.

Q. Is that the truth? A. Yes, sir.

Q. You told the Sheriff the truth about that? A. Yes, sir.

[245] Q. Did you tell the Sheriff anything later that wasn't the truth? A. I don't remember.

Q. Do you remember telling him anything that wasn't the truth? A. Everything I told him was the truth about Baby Blunt.

Q. Has he made you tell anything that wasn't the truth? A. Who was that?

Q. The Sheriff? A. Yes, he made me tell.

Q. What was it he made you tell that wasn't the truth? A. He made me tell I killed that woman.

Q. Did you tell them you did it? A. I told him I did it by forcing me to.

Q. Did you first tell him you did it? The first time he asked you about it, did you tell him you did it? A. No, sir.

Q. Did you tell him anybody else did it? A. No, sir.

Q. How about Charlie Blunt? A. No, sir, I didn't tell him Charlie Blunt did it.

Q. Didn't you tell Sheriff Cribb that Charlie Blunt killed that woman and you leaned over and put your head

to her heart and her heart wasn't beating? A. No, sir, I didn't tell him that.

Q. Didn't you tell the Sheriff that Charlie Blunt killed Mrs. Coker ? A. No, I ain't told him that.

Q. Did you tell Sheriff Cribb you tried to get Charlie Blunt not to bother that woman? A. No, sir, I didn't tell him that.

[246] Q. Did you tell Sheriff Cribb Charlie Blunt told you to see if he killed her? A. No, sir, I didn't tell him that.

Q. Did you tell Sheriff Cribb that you put your head on the woman, and her heart had quit beating, and you walked around the street, and when you got by there, he was putting her in the Parish House boiler room? A. No, sir.

Q. Did he carry Charlie Blunt up to talk to you? A. Yes, sir, he went along.

Q. I want to ask you if in your presence, if the Sheriff didn't tell you and Charlie Blunt or told Charlie Blunt in your presence, that you accused him of killing Mrs. Coker, did that happen? A. Not in my presence. I didn't see Charlie there only time or two—one or two times.

Q. What did he talk to Charlie Blunt about? A. I don't know. He had Charles in another room.

Q. At the time you told Sheriff about Charlie Blunt killing Mrs. Coker, did he beat you that day? A. Who was that?

Q. At the time he said you told him that, did he beat you that day? A. He say I did it.

Q. Didn't you hear the Sheriff testify that you told him in Columbia that you told him Charlie Blunt killed Mrs. Coker? Did you hear him testify to that? A. Yes, I heard him.

Q. At the time he told you that, did he hit you? A. No, sir, he ain't hit me.

Q. Did he get the strap on you that time? A. No, sir.

Q. Did he use the black jack on you that time? [247] A. No, sir.

Q. Did any other officer do anything to you that time? A. No, sir.

Q. At the time you were talking to him, you were talking free and voluntary? A. Yes, sir. They was easy on me then.

Q. That is the time Sheriff says you told him Charlie Blunt did it? A. I didn't tell him.

Q. Did you tell the Sheriff that Charlie Blunt dragged her through the lot over to the cemetery wall? A. I didn't tell him that.

Q. Did you tell the Sheriff that Charlie Blunt put her up on top of the cemetery wall and let her fall on the other side? A. I didn't tell him.

Q. Did you tell the Sheriff that Charlie Blunt dragged her up this little driveway and put her body in the boiler room or basement? A. No, sir.

Q. You deny you told him that you left Charlie Blunt and went around there and came around and he was putting her in the boiler room? Did you see Charlie Blunt do anything to this woman? A. No, sir, I ain't seen Charlie Blunt but one time.

Q. You and Charlie Blunt didn't do this thing together? A. I didn't even see Charlie Blunt I told you, but one time—that is when I was going home.

Q. You say on this particular day you didn't eat any breakfast? A. That is right.

Q. The day this statement was signed? [248] A. That's right.

Q. Did you know where Mrs. Mayless Coker's underclothing was when you were talking to the Sheriff in Columbia? A. No, sir.

Q. Did the Sheriff, Mr. Carter, Mr. Williams, chief of police or any officer tell you where her missing clothes

were? A. The Sheriff say you got a lot of stuff to put on me.

Q. I asked you if either one told you where her missing clothing were? A. No, sir.

Q. Did anybody tell you that? A. No, sir.

Q. Is there a sawdust pile back your house? A. No, sir.

Q. Where is it? A. None at my house.

Q. How close is there one at your house? A. I ain't know nothing about a sawdust pile.

Q. On the night you signed this statement, did the Sheriff call Georgetown in your presence? A. If he make any telephone call, I don't remember.

Q. If he made one at your request, don't you think you were there? A. I don't remember.

Q. Did he make two telephone calls that night? A. I don't remember.

Q. Did you send for the Sheriff to come up and see you? A. Never did send for the Sheriff.

Q. On that afternoon when the Sheriff was talking to you, was Mr. Roy Williams in the room with you? [249] A. There was several of them.

Q. Was Mr. Carter, the Deputy Sheriff there? A. Several of them was there.

Q. Did any of them go out of the room and leave you and the Sheriff in there together? A. Never did. It was all of us's—three or four.

Q. Did you ask them to go out and let you talk to the Sheriff privately? A. Never did.

Q. Did you tell the Sheriff where the garter belt and this slip and the pants of Mrs. Coker were when you were talking to him in Columbia? A. I ain't never told the Sheriff that.

Q. Did you tell him it was under a house behind your home? A. I never told him that.

Q. Did he call Mr. Johnson in your presence to investigate? A. Not in my presence.

Q. Did you later tell them that they were in the sawdust pile? Who told him where the sawdust pile was? A. I don't know. He said he had a lot of evidence on me. I know I didn't put 'em there.

Q. Did he tell you they were in the sawdust pile? A. I don't remember he telling me that.

Q. Can you explain to the jury how you could tell him this watch was under this little wire fence between Mrs. Bramlett's house and the wall of the cemetery? A. I don't know nothing about it.

Q. How in the world could he know that and put it in the statement, if you didn't tell him? A. I don't know.

Q. You know where Mrs. Bramlett lives at? A. No, sir.

[250] Q. You know where Mr. Shep Thompson's house is? A. Yes, sir.

Q. You know where the vacant lot is? A. Yes, sir.

Q. Did you tell the Sheriff you walked through that lot? A. No, sir.

Q. Did you tell him you put Mrs. Coker's body over that wall? A. No, sir.

Q. Did you tell him her head hit a tombstone in the cemetery? A. No, sir.

Q. Did you tell him you went and got a tub and put side the fence to put her over the wall? A. No, sir.

Q. Did you intend to rape that woman? A. No, sir.

Q. Did you tell him that you put your head to her heart and it wasn't beating and you found out she was sick? Did you tell him that? A. No, sir.

Q. Did you tell him you put the newspaper over her face? A. No, sir.

Q. Did you tell him you tore this watch from Mrs. Coker's arm? A. No, sir.

Q. How do you reckon the watch got under the fence, between the cemetery and the street? A. I don't know.

Q. Did you see anybody put it there? A. I don't know.

Q. Did you see anybody put the clothes in the sawdust pile? [251] A. I don't know.

Q. You don't know how Mrs. Coker's watch got under the wire fence? A. No, sir.

Q. Did you hear anybody say anything about the watch being under the fence the night you signed that? A. I ain't even signed that.

Q. Did you hear them read it over that the watch was under the fence? A. I don't know what they put in there.

Q. Did they read it over to you? A. Read what?

Q. That statement you signed? A. What statement?

Q. Did you sign a statement? A. Sure—by force.

Q. Did they read it over to you? A. I don't remember.

Q. Don't remember what? A. If they read any statement to me.

Q. You don't know what was in it? A. No, sir; lot of things they put in there.

Q. Name me a few they put in there? A. I can't name 'em.

Q. You don't want to remember that? A. Dey the one put the words in there. I didn't even open my mouth.

Q. Did you hear the dog bark that night? A. I didn't hear no dog.

Q. Did he scare you? A. I didn't hear no dog.

Q. How about when the woman screamed? A. I didn't hear no woman scream.

[252] Q. Did you tell the Sheriff you dragged her down that lot with the intention of raping her? A. No, sir.

Q. Was that what your intentions were? A. No, sir.

Q. Did you tell Mr. Carter you threw your arm around her neck and she screamed and the dog barked, and it scared you? A. No, sir.

Arthur Waitus—Redirect

Q. Did they make you say that these clothes were buried in the sawdust pile? A. I didn't tell them that.

Q. Did they make you say it? A. I didn't tell them that.

Q. Did they tell you to say it? A. I didn't tell him that.

Q. Did you hear them read over that you had said that? A. I ain't heard that.

Q. Can you explain to that jury, if you didn't kill that woman, how the clothes got buried in the sawdust pile and how the watch got under the fence? A. I don't know how they got there. I didn't put them there. I don't know nothing about any clothes.

Q. You see them there? A. Yes, sir.

Q. You see the watch? A. Yes, sir, I see my shoes there, too.

Q. They are your shoes? A. Yes, sir.

Q. They make tracks? A. Yes, sir, them my shoes.

Q. These are the same shoes you leave in the house? [253] A. If I been done that, I take my shoes and hide 'um. Why I leave them in my house?

Redirect Examination by Mr. Grimes:

Q. Have you got anything else you want to tell these gentlemen? They are the ones who are going to decide this matter? A. I ain't got nothing more to say, no more than what they forced me to say.

Q. Have you got anything else you know that you want to tell them? A. That's all I got to say.

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TESTIMONY OF HENRY EVANS

Direct Examination:

[370] Q. When was the next time you saw Arthur Waitus? A. The next time I saw him was in Fairmont when me and the law went to get him.

Q. What was the reason for going? A. They told me they was going to hold me in jail until they could find him, because he was the last man that seen him.

Q. Who told you that? A. Mr. Woodrow and another big fellow and Chief Nobles—all of them was around there.

Q. They said they would hold you in jail until they would find "Fateye"? A. Yes, sir; because he was last seen in my automobile.

Q. Did you tell them about taking him to Myrtle Beach? A. Yes, sir; I told them that.

Q. Did you tell them about putting him on the bus? [371] A. Yes, I tell them about putting him on the bus.

Q. It was at their insistence you went to Fairmont? A. Yes, sir.

Q. Did you have an automobile of your own? A. I drove my own car up there.

Q. Do you remember what day of the week it was? A. That was on Monday.

Q. When you went there, did you see Arthur Waitus after you got to Fairmont? A. Yes, sir; I saw him.

Q. Where was he when you saw him? A. He was sitting down on the porch in a swing when I pulled up to the door.

Q. Sitting on the porch in a swing? A. Yes, sir.

Q. Was anybody else with him? A. Yes, sir; some more people was with him.

Q. Do you know who lived in the house where he was? A. He said his grandmother was there, and she had been sick.

Q. What did you tell "Fateye" when you got there? A. I told him that his mother was in pretty bad condition—she had a heart attack, and wanted him to come home, and he said: "O. K. Just let me get my coat," and he went and got his coat, and they called for him to come eat before we left. He set down and eat and he got in the car, and I went down a couple of blocks.

Q. Was anybody else in the car with you? A. There was two more fellows in my car, I picked up two boys at a little store, and I went down to the house.

[372] Q. Were these two boys still in the car when you rode off with "Fateye"? A. No.

Q. They had gotten out? A. Yes.

Q. When you pulled off, it was just you and "Fateye" in the car? A. Yes, sir.

Q. Did you have any arrangement with the Sheriff about this? A. Yes, sir; they made the plans for me to go out and look for him.

Q. Did you see the Sheriff after that? A. Yes, sir; because they were watching down the road up under a tree.

Q. They told you where they would be? A. Yes, sir.

Q. What happened then? A. I rode down about a block. I asked him: "Is all this stuff about looking for you for killing somebody true"? He said he swore to God he didn't do it. I come on up to the road where the law was.

Q. What did you do when you got where the law was? A. They pulled up behind me and blowed the siren.

Q. Was that according to plans? A. Yes, sir.

Q. Did you stop? A. Yes, sir; I stopped.

Q. What happened then? A. After I stopped, he opened the door, and he got in the car. I heard them mention something about a ring.

Q. Did you hear them read any warrant to him? [373] A. No, sir.

Q. Were you there when they put him in the car? A. I was in my car whenever they put him in their car.

Q. Did you see them reading anything to him? A. No, sir.

Q. How far was your car parked? A. Right close together.

Q. You didn't hear them tell him anything—what they were charging him with? A. No, sir.

Q. How did you get your gas? Did you pay for it yourself? A. I had some money of mine in my pocket, and Deputy Sheriff, Mr. Lewis pulled up and handed me about $5.00, and he asked me a few more questions, and said, "I might want to see you later." When he went back over there, he called over the 'phone, and asked me to come over there. I went. That is when they told me about holding me in jail. So I decided I would help them find him.

Q. You didn't want to go to jail? A. No, sir.

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[419] (Friday morning, 9:30 A. M.)

MOTION FOR NEW TRIAL

Mr. Rosen: Your Honor, we would like to move for a verdict of *non obstante veredicto,* on the ground that the State failed to introduce evidence sufficient to support a verdict of guilty;

On the ground that the State failed to prove motive for the offense committed;

On the ground that the State has failed to prove malice aforethought, an element of the crime.

On the further ground that the Court erred in allowing the introduction of evidence, both testimony and exhibits, over the timely objection of the defendant.

And on the further ground that the Court erred in refusing defendant's motion for directed verdict.

(After argument of counsel, the Court ruled as follows):

The Court: In a great many cases, the duty that I perform is very burdensome, because there arise chances of there being some doubt. In this case, in every particular and every detail, I have no hesitancy in saying that I have performed my duty free of all doubt. The defendant has had as fair and impartial a [420] trial as I know how to give. There is not the slightest doubt in my mind as to that.

His attorneys have represented him with ability. I commend them for, and wish to extend to them thanks for the able services rendered under the appointment of the Court. The Solicitor, representing the State, has conducted the State's case with great ability, and with a fairness that I have never seen surpassed in a case of this kind. All of the officials conducted themselves well, and I wish to pay tribute to them, and the Sheriff of your County and the other law enforcement officers of this County who try to protect the public. The spectators during this trial have acted with almost perfect decorum, with a little snickering coming almost entirely from the defendant's witnesses or their associates.

In coming to the evidence, there is not the slightest doubt of the defendant's guilt. No impartial person would have a shadow of a doubt of the defendant's guilt. It is impossible for him to have made the confession that was introduced in evidence unless he was guilty. There is nothing surprising to me that he made the confession in a connected way, which was largely the basis of the attack here by his attorneys, that he was too illiterate to have done it. Of course, the term that he used was bound to have been discussed before him during the questioning. An illiterate man, in a great many instances, has more power of concen-

tration of recollection of details than the learned man—they do not depend upon notes to renew the memory like a lot of people—like a blind person, they rely on memory altogether. I doubt that any man, who had been educated, depending on notes, could have related chronologically in detail, such as the defendant has made, such things as where the watch was dropped, [421] such things as where he lay the body when he was trying to get in this house in an effort to conceal the crime. So, I have no hesitation in overruling the motion for a new trial.

(At this point the defendant is arraigned before sentence is passed by the Court.)

The Court: Do you have anything further to say?

Arthur Waitus: Yes, sir; I got a clear conscience that I didn't kill that woman. My conscience was clear. I realize God, and I know my conscience is clear. If I go down in the Chair, I am going down like a innocent man, because I didn't have nothing to do with it. I didn't kill her. I didn't do it.

(At this point the Death Sentence is passed.)

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Opinion of Stukes, *A. J.*

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, Alias "FATEYE",

Appellant.

APPEAL FROM GEORGETOWN COUNTY
STEVE C. GRIFFITH, JUDGE

Case No. 3832

Opinion No. 16908

Filed September 14, 1954

AFFIRMED

HAROLD R. BOULWARE, of Columbia, and VERNOID R. BUNCH, of Georgetown, for appellant.

SOLICITOR J. REUBEN LONG, of Conway, for respondent.

STUKES, A. J.: Rather than repeat them, we incorporate herein the facts of the murder of which appellant, a Negro, has been twice convicted by reference to the

opinion (by Mr. Justice Oxner) in the appeal from the first conviction. State v. Waitus, 224 S. C. 12, 77 S. E. (2d) 256.

At the end of it was the following: "In concluding this opinion, we desire to recognize the conscientious and able manner in which counsel for appellant, who served without compensation, have discharged their duties. The arduous task imposed upon them has been skilfully handled." After the verdict of guilty was returned in the second trial, which is presently under review, and motions for judgment *non obstante veredicto* and for new trial were denied, the counsel petitioned to be relieved upon their considered conclusion that there was no reversible error in the trial and that two other attorneys had been drawn into the case by members of appellant's family, who were thereupon substituted as counsel by order of the court and they perfected the appeal. The order concluded as follows: "It is Further Ordered, that it is the duty of the Court to recognize the services by the Court-appointed attorneys, J. Shephard Thompson, Meyer C. Rosen and C. C. Grimes, Esqs., wherein their said services have been extra burdensome, both in the rendering of their services and their expenses that they have entailed and which they were required to bear. Their services are worthy of the high traditions of our profession, and this Court expresses its appreciation and commends said attorneys for the fine manner in which they have discharged their professional duties."

The exceptions which were taken in behalf of appellant by the substituted counsel follow:

1. That the Court committed error in allowing the introduction of the pair of shoes allegedly found in the Defendant-Appellant's living quarters when the Defendant-Appellant was not present and allowing in evidence any testimony relating to the pair of shoes.

2. That the Court committed error in admitting the alleged confession of the Defendant-Appellant since the *corpus delicti* had not been established.

3. That the Court committed error in refusing to direct a verdict and allowing the case to go to a jury when the *corpus delicti* had not been established.

4. That the Court committed error in allowing the introduction of the alleged confession of the Defendant-Appellant.

5. That the Court committed error in admitting in evidence the alleged confession of the Defendant-Appellant and allowing testimony relating to the contents thereof.

However, upon argument of the appeal counsel disregarded the most of the stated exceptions and filed a well-prepared brief, supported by full oral arguments, which was limited to the following questions:

A. Did the Court err in trying and convicting the appellant, in violation of his state and federally protected rights, after his presence in the jurisdiction has been obtained by fraud, force or violence practiced upon him by state officers.

B. Did the Court err in admitting into evidence the alleged confession of the appellant and allowing testimony relating to the contents thereof.

In keeping with our invariable rule of *in favorem vitae* (State v. Scott, 209 S. C. 61, 38 S. E. (2d) 902; State v. Taylor, 213 S. C. 330, 49 S. E. (2d) 289) we have not only considered the above original exceptions (the most of which would otherwise and ordinarily be deemed to have been abandoned by failure to argue them) and the questions briefed and orally argued in this court, but we have also independently searched the record for prejudicial error,

whether or not made the ground of exception or question, and we find none.

The first conviction was reversed and appellant was granted a new trial because of the absence of members of his race from the grand and petit juries. Thereafter a newly-drawn grand jury, which included several members of the Negro race, returned an indictment; and appellant was arraigned for trial before a petit jury panel which contained Negroes, one of whom was accepted for service and was a member of the trial jury which again convicted the appellant.

We proceed to consider the exceptions involved in the instant appeal.

Exceptions 2 and 3 challenge the sufficiency of the proof of the *corpus delicti*, which in the crime of murder consists of (1) the death of a human being and (2) the causative, criminal act or agency of another. State v. Thomas, 159 S. C. 76, 156 S. E. 169. State v. Epes, 209 S. C. 246, 39 S. E. (2d) 769. State v. Thomas, 222 S. C. 484, 73 S. E. (2d) 722. 41 C. J. S. 5, Homicide, Sec. 312. Here the hidden, lifeless body of the victim was found a few hours after death; and post-mortem examination by experts, including a medical college professor, disclosed external and internal proof of death by strangulation which resulted from the application of external force. Manifestly, the proof of the *corpus delicti* in this case was beyond reasonable doubt.

Exceptions 2, 4 and 5 and question B assign error in the admission in evidence of the confession which was signed by the appellant twelve days after his accusal and arrest. Again, we adopt the relevant contents and conclusion of our opinion upon the first appeal. After statement of the evidence relating to the obtention of the confession, and there is no contention of material variance in it at the second trial, we said:

"It is readily seen that the evidence is in sharp conflict as to the voluntariness of the alleged confession. Under the rule which prevails in this State, the question of whether or not the confession is voluntary is one which is addressed to the Court in the first instance, but if the evidence with respect thereto is conflicting, the jury must be the final arbiter of such fact. Under the circumstances of this case, we think the trial Judge properly submitted this issue to the jury. State v. Miller, 211 S. C. 306, 45 S. E. (2d) 23; State v. Brown, 212 S. C. 237, 47 S. E. (2d) 521. The facts here are readily distinguishable from those in State v. Harris, 212 S. C. 124, 46 S. E. (2d) 682, where a majority of this Court held that the issue of the voluntariness of the confession was properly submitted to the jury, but the United States Supreme Court reversed. 338 U. S. 68, 69 S. Ct. 1354, 93 L. Ed. 1815. Neither can it be said that the circumstances under which this confession was received violate those fundamental principles of liberty and justice which are protected by the Fourteenth Amendment against infraction by any State. Gallegos v. State of Nebraska, 342 U. S. 55, 72 S. Ct. 141, 96 L. Ed. 86."

The first exception is concerned with the reception in evidence of a pair of shoes. After appellant fled his home other occupants of the house, consented to search of it by investigating officers and in appellant's bedroom they found the shoes. Appellant, who testified, did not deny his ownership of them; but offered testimony that they were of a type in common use in the community. They fit the tracks which were found in soft ground at the scene of the crime and an officer, who was experienced in identification, testified to distinguishing features of the shoes

which indicated that they made the tracks, of which latter casts were in evidence. Under these circumstances, they were admissible in evidence, State v. Griffin, 129 S. C. 200, 124 S. E. 81, 35 A. L. R. 1227. Annotation, 31 A. L. R. 204.

There remains for consideration question A, that first presented in the brief and stressed in oral argument, in which it is charged that appellant was returned to the State by fraud, force or violence, which was practiced upon him by the officers, whereby the conviction of appellant should be reversed and set aside, and he be freed from custody. The question imputes facts more favorable, from appellant's viewpoint, than the record supports. When the sheriff of Georgetown County arrested appellant across the North Carolina line he was armed with a warrant which charged appellant with the murder of which he has been convicted; and the sheriff was accompanied by a deputy sheriff of the North Carolina county in which the arrest was made. Appellant submitted to arrest and return to this State without resistance or protest. But that feature of the case need not be further dwelt upon because it is immaterial, as will be seen upon consideration of the relevant decisions of the State and Federal courts, to which we now turn.

It would be a work of supererogation to review, or even cite in detail, the many authorities on this subject for it was recently, thoroughly done in the annotation in 165 A. L. R. 947, upon which we shall freely draw.

It is virtually a universal rule of law that where a person accused of a crime is found within the territorial jurisdiction wherein he is so charged, and is held under process legally issued from a court of that jurisdiction, neither the jurisdiction of the court nor the right to put him on trial for the offense charged is impaired by the manner in which he was brought from another jurisdiction, whether by kidnapping, illegal arrest, abduction, or irregular extradition proceedings.

The basic principles supporting the rule is that when a person accused of a crime is held under valid process in the proper forum, such detention is not rendered invalid because of the illegality of the events which preceded, or which made the detention physically possible. From this principle, other lines of reasoning have been developed to meet the various arguments raised in opposition to the rule. Thus, it has been reasoned that where there is a detention of an accused under legal process, his wrong against the state holding him is not to be condoned because of violence or wrong committed against his person by individuals who brought him into the jurisdiction by force or other illegal means, even though such individuals may be subject to civil or criminal liability for their unlawful acts.

A fugitive from justice has no vested right of asylum in the state or country to which he has fled in the absence of provision therefor under either existing treaties or Federal statutory or constitutional provisions relating to extradition, and thus cannot attack the jurisdiction of the court to try him upon the ground that he was forcibly abducted or otherwise illegally returned to answer the criminal charge against him, in violation of such right of asylum.

The fact that under the Constitution and laws of the United States a fugitive from justice from one state to another can be surrendered to the demanding state upon proper proceedings taken does not give a fugitive the right of asylum in the state to which he fled unless removed in conformity with such proceeding, since the laws do not recognize any such right of asylum, and no provision is made for the return of parties who, by violent means or without lawful authority, have been abducted from the asylum state to the jurisdiction where their prosecution is sought.

The numerous supporting decisions, State and Federal, for the foregoing postulates may be readily found by refer-

ence to the cited annotation. See also 14 Am. Jur. 919, Criminal Law, Sec. 217, and 22 C. J. S. 242, Criminal Law, Sec. 146.

Apparently the only decision of the Supreme Court of the United States since the above A. L. R. Annotation is Frisbie v. Collins (1952) 342 U. S. 519, 72 S. Ct. 509, 96 L. Ed., 541, in which it was attempted to obtain modification of the established rule perforce the effect of the Federal Kidnapping Act, 18 U. S. C. A., sec. 1201. The contention was rejected by the court which said in its unanimous opinion, by Mr. Justice Black: "This Court has never departed from the rule announced in Ker v. Illinois, 119 U. S. 436, 444, 7 S. Ct. 225, 229, 30 L. Ed. 421, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprized of the charges against him and after a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will. * * * We think the Act cannot fairly be construed so as to add to the list of sanctions detailed a sanction barring a state from prosecuting persons wrongfully brought to it by its officers. It may be that Congress could add such a sanction. We cannot."

In the older, leading case of Mahon v. Justice, 127 U. S. 700, 8 S. Ct. 1204, 32 L. Ed. 283, heavy reliance was had upon, and there was lengthy quotation from, our early case of State v. Smith (1829) 1 Bailey 283, 19 Am. Dec. 679, in which the well-reasoned order of the lower court, by Chancellor Harper, was published in full along with the opinion

of the Court of Appeals; the latter concluded: "The prisoner is an offender against our laws, and to them he owes atonement." The case involved, as does that in hand, the return of a defendant from North Carolina, and likewise for a capital offense. It was also cited with approval in Ker v. Illinois, supra, 119 U. S. 436, 7 S. Ct. 225, 30 L. Ed. 421, and Pettibone v. Nichols, 203 U. S. 192, 27 S. Ct. 111, 51 L. Ed. 148. Our State v. Smith, supra, may thus itself be properly said to be a leading case. The holding of it is accurately summarized in 7 S. C. Dig 409, as follows:

> "It is no ground for the discharge, or exemption from punishment, of a person who has been guilty, within the limits of this State, of an offense against its laws, that he was subsequently arrested with lawless violence in the territory of another State and brought within this State in violation of the jurisdiction of the State, in which he was arrested. In whatever manner he is brought within the jurisdiction of this State, he is responsible for his previous violation of its laws; nor is his punishment a cause of offense to the State in which he was arrested; but the true cause of offense to that State is the violation of its territory, for which those who were guilty are alone responsible."

The rule was interestingly applied in reasoning in Lascelles v. Georgia, 148 U. S. 537, 13 S. Ct. 687, 37 L. Ed. 549, by which it was established that a defendant may be tried in the demanding State for a crime other than that for which he was extradited, and surrendered by the rendering State. It was there said by the Court: "But it is settled by the decisions of this Court that, except in the case of a fugitive surrendered by a foreign government, there is

nothing in the Constitution, treaties or laws of the United States which exempts an offender, brought before the courts of a State for an offense against its laws, from trial and punishment, even though brought from another State by unlawful violence, or by abuse of legal process. Ker v. Illinois, 119 U. S. 436, 444; Mahon v. Justice, 127 U. S. 700, 707, 708, 712, 715; Cook v. Hart, 146 U. S. 193, 190, 192."

From all of the foregoing we conclude without difficulty and beyond doubt that this last and major point of the appeal is, like the others, without merit.

In the absence of prejudicial error in the indictment and trial of appellant, the conviction and sentence must be, and they are, affirmed.

TAYLOR, OXNER and LEGGE, *JJ.*, and M. M. MANN, *A.A.J.*, concur.

Opinion of Oxner, *J.*

STATE

v.

WAITUS.

No. 16767

SUPREME COURT OF SOUTH CAROLINA

July 28, 1953

J. SHEPERD THOMPSON, C. C. GRIMES, JR., and MEYER ROSEN, Georgetown, for appellant.

J. REUBEN LONG, Solicitor, Conway, J. RALPH GASQUE, Marion, for respondent.

OXNER, *Justice.*

At the June, 1951, term of the Court of General Sessions for Georgetown County, appellant, a Negro about thirty-three years of age, was indicted for murder. Upon arraignment, he stated that he was without counsel. The Court thereupon appointed three members of the Georgetown Bar to represent him. They promptly made a motion for a change of venue which, after a full hearing, was granted and the place of trial changed to Marion County. At a special term of court in that county, held in August, 1951, the case was called for trial. Counsel for appellant made a motion for a continuance. This was refused. They then made a motion to quash the indictment upon the ground that there has been a long-continued, systematic, and arbitrary exclusion of Negroes from grand jury service in Georgetown County where the indictment was found.

Appellant also challenged the array of petit jurors in Marion County upon the same ground. It was urged that the exclusion of Negroes in each instance denied appellant the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States. Both motions to quash were refused. The case proceeded to trial and resulted in a verdict of guilty and a sentence of death by electrocution.

There are numerous exceptions. We shall first dispose of those relating to the claim of discrimination against Negroes in the selection of the grand jury in Georgetown County and in the selection of trial venire in Marion County. Before entering into a discussion of this question, it might not be amiss to briefly review the constitutional and statutory law of this State relating to the qualifications of jurors and the method of selecting them.

The Constitution of this State, Article 5, § 22, requires each juror to be a qualified elector between the ages of 21 and 65, and of good moral character. Article 2 prescribes the qualification of electors and provides for their registration. The term "qualified elector" means a "registered elector", and each grand and petit juror must be a registered elector. State v. Rector, 158 S. C. 212, 155 S. E. 385; State v. Grant, 199 S. C. 412, 19 S. E. 2d 638. The constitutional requirements as to electors are set out and discussed in State v. Middleton, 207 S. C. 478, 36 S. E. 2d 742. As there pointed out, every registered male elector is a potential and duly qualified juror, and his name may be taken from the registration books by the jury commissioners. The fact that he fails to vote does not make him ineligible for jury duty. (Women cannot serve on the jury in South Carolina.)

The jury commissioners of each county consist of the auditor, the treasurer and the clerk of court of such county. During December of each year, they are required to pre-

pare from the official enrollment books of qualified electors a list of male electors of their county, between the required ages, which they deem qualified to serve as jurors. In most of the counties such list must include not less than two-thirds of such qualified electors. The jury commissioners must place the name of each person on said list on a separate paper and after folding, insert same in a container or capsule. These capsules are then placed in what is known as a "jury box". Each capsule or container placed in the jury box must be so made as to be indistinguishable from the others. See Sections 38-51 to 38-56, inclusive, of the 1952 Code. At the same time they are also required to place a certain specified number of names in the "tales box". The names placed in this box must consist of electors residing within five miles of the Court house. Section 38-60 of the 1952 Code.

The grand jury consists of eighteen men. At the end of each year six are drawn by lot to hold over from another year. The remaining twelve necessary to constitute the grand jury for the ensuing year are drawn by the jury commissioners from the jury box. Sections 38-401 to 38-405 of the 1952 Code. At a certain prescribed time before each term of court, the jury commissioners are required to draw from the jury box thirty-six petit jurors to serve for each week the court is in session. Section 38-61 of the 1952 Code. In 1953 this section was amended so as to increase this number to forty in some counties. If there is any deficiency in the required number of grand or petit jurors, such deficiency is supplied from names drawn from the tales box. Section 38-72 of the 1952 Code.

There is certainly no denial of the equal protection of the laws in any of the foregoing constitutional or statutory provisions. Franklin v. South Carolina, 218 U. S. 161, 30 S. Ct. 640, 54 L. Ed. 980; State v. Middleton, supra,

207 S. C. 478, 36 S. E. 2d 742. Indeed, appellant does not assail the validity of any of them. His contention is that they were so administered by the jury commissioners of Georgetown and Marion Counties as to result in the arbitrary and systematic exclusion of Negroes. We now turn to the facts upon which this contention is based.

The Chairman of the Board of Registration of Georgetown County stated that there were between 5000 and 5200 registered electors in that county, of whom approximately 1200 were Negroes. The record shows that about four years prior to the indictment of appellant, there was a rather heavy registration of colored people. The Clerk of Court testified that she and the other jury commissioners had not discriminated against Negroes; and that she knew some were placed in the jury box but could not say how many, although she believed that the proportion of Negroes was about the same as the proportion in which they registered. She further testified that Negroes had served as petit jurors and during the last few terms of court there had been one or more on almost every panel of the petit jury; but that since 1947, when she assumed the office of clerk of court, she did not recall a Negro ever having served on the grand jury in Georgetown County.

We next discuss the facts upon which the motion to quash the trial venire in Marion County was based. The evidence shows that in this county there are between five and six thousand registered electors, of whom about 600 are Negroes. Two of the jury commissioners, the County Treasurer and the Auditor, estimated there were between eleven and twelve hundred names placed in the jury box, of whom between 50 and 100 were Negroes. The Auditor stated that when they made up the jury box, they checked and found that it contained the names of about 55 Negroes, and that they "went back and put some more Negroes in it." He further testified:

"Q. Do you recall whether or not any negro has been drawn at the time you were drawing a jury for either the Grand Jury or Petit Jury? A. I believe we have drawn a few negroes in some cases.

"Q. And they were excluded from the jury? A. We considered them disqualified at the time they were drawn.

"Q. What disqualified them? A. Well, it could be several reasons that disqualified them, some had moved out of the County.

"Q. But any time a negro has been drawn, he has been disqualified? A. If we considered him disqualified.

"Q. But he has been disqualified in each case that any negro has even been drawn—no negro has ever served? A. No, sir."

While denying that they had discriminated against Negroes in the selection of jurors, both the County Treasurer, who had held office since 1939, and the Auditor, who had held office since 1941, admitted that no Negro had ever served on either the petit or grand jury of Marion County since they assumed office. The testimony of the Clerk of Court was to the same effect.

Do the foregoing facts show unconstitutional discrimination? This question must be answered in the light of the construction which the United States Supreme Court, the final arbiter in such matters, has placed on the equal protection clause of the Fourteenth Amendment. We are bound by its decisions construing the Federal Constitution, although our own views may not be in accord therewith. It has been consistently held by that Court that equal protection of the laws is denied to a Negro charged with a crime whenever by any action of a State, whether through its legislature, through its courts, or through its executive or ad-

ministrative officers, Negroes are intentionally excluded, solely because of their race or color, from serving upon the grand jury that indicts the defendant or the petit jury which tries him. Carter v. State of Texas, 177 U. S. 442, 20 S. Ct. 687, 44 L. Ed. 839; Norris v. State of Alabama, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074. "When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group, indictments and verdicts returned against them by juries thus selected cannot stand." Patton v. State of Mississippi, 332 U. S. 463, 68 S. Ct. 184, 187, 92 L. Ed. 76, 1 A. L. R. 2d 1286.

The Fourteenth Amendment does not give a Negro charged with a crime in a state court the right to demand that the grand or petit jury, which considers his case, shall be composed, either in whole or in part, of citizens of his own race. A mixed jury is not required. "Fairness in selection has never been held to require proportional representation of races upon a jury." Akins v. State of Texas, 325 U. S. 398, 65 S. Ct. 1276, 1279, 89 L. Ed. 1692. "Jurymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race. * * * Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race." Cassell v. State of Texas, 339 U. S. 282, 70 S. Ct. 629, 631, 94 L. Ed. 839.

A Negro objecting to a grand or petit jury because of alleged discrimination against his race has the burden of proving that qualified Negroes were intentionally excluded because of their race or color. Akins v. State of Texas, supra. The mere absence from a particular grand or petit jury of members of the Negro race is insufficient, in and of itself, to show discrimination against the defendant in the selection of the jury. Fay v. People of State of

New York, 332 U. S. 261, 67 S. Ct. 1613, 91 L. Ed. 2043. But where it is shown that notwithstanding the fact that a substantial proportion of those eligible for jury duty are Negroes, no Negro has been drawn for jury service over a long period of years, a strong prima facie case of racial discrimination is shown. Norris v. State of Alabama, supra, 294 U. S. 587, 55 S. Ct. 579, 79 L. Ed. 1074. When such a showing is made, the burden is upon the State "to justify such an exclusion as having been brought about for some reason other than racial discrimination." Patton v. State of Mississippi, supra, 332 U. S. 463, 68 S. Ct. 184, 186, 92 L. Ed. 1286. In a concurring opinion in Cassell v. State of Texas, supra, 339 U. S. 282, 70 S. Ct. 629, 634, 94 L. Ed. 839, it was stated: "If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose. The purpose may not be of evil intent or in conscious disregard of what is conceived to be a binding duty. Prohibited conduct may result from misconception of what duty requires."

In applying the rule just stated, the Supreme Court in Hill v. State of Texas, 316 U. S. 400, 62 S. Ct. 1159, 86 L. Ed. 1559, found discrimination in the selection of grand jurors in Dallas County, Texas, by virtue of the fact that, despite a large number of Negroes qualified for grand jury service, none has been drawn. A similar conclusion has been reached in other cases. Norris v. State of Alabama, supra, 294 U. S. 587, 55 S. Ct. 579, 584, 79 L. Ed. 1074; Patton v. State of Mississippi, supra. In speaking of the type of evidence necessary to rebut a prima facie showing of discrimination, the Court, in Norris v. State of Alabama, supra, said: "We think that this evidence failed to rebut the strong prima facie case which defendant had

made. That showing as to the long-continued exclusion of negroes from jury service, and as to the many negroes qualified for that service, could not be met by mere generalities. If, in the presence of such testimony as defendant adduced, the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of negroes from jury service, the constitutional provision—adopted with special reference to their protection—would be but a vain and illusory requirement."

Applying the foregoing principles to the facts in Marion County, the conclusion is inescapable that there has been an unconstitutional discrimination and the Court should have granted appellant's motion to quash the panel of petit jurors when the case was called for trial. In this county approximately 10% of the qualified electors are Negroes. Between five and ten per cent of the names in the jury box are members of the colored race. Notwithstanding this substantial percentage of potential Negro jurors, we have the indisputable fact that for a period of at least twelve years, no Negro has ever sat on either the grand or the petit jury in Marion County. There was thus made out a strong prima facie case of racial discrimination in the selection of the jury. The only evidence to rebut this prima facie case is the general statement of the jury commissioners that there was no intentional and purposeful discrimination. This under the decisions which we have reviewed is insufficient. We are quite sure that there was no evil intent or conscious disregard of duty by the jury commissioners, but, as stated in a concurring opinion in Cassell v. State of Texas, supra, 339 U. S. 282, 70 S. Ct. 629, 635, 94 L. Ed. 839, "prohibited conduct may result from misconception of what duty requires."

The situation in Georgetown County is somewhat different but the principle is the same. The complaint here is

that there was discrimination in the selection of the grand jury. Almost 25% of the qualified electors are Negroes but there is no evidence as to the number placed in the jury box. It was the opinion of the Clerk of Court that the proportion was substantially the same as that in which they were registered. If she was correct in this belief, about 25% of the names in the jury box were Negroes. From 1947 to 1951, when appellant was indicted, it appears that no Negro was ever drawn on the grand jury. Under any view of this matter, it would seem that chance and accident alone could hardly have brought about the total absence of Negroes on the grand jury. It does appear that they have served as petit jurors. In view of the fact that considerably more petit jurors are drawn than grand jurors, it would be natural to expect the total number of Negroes serving as petit jurors to exceed those serving as grand jurors. But the fact remains that twelve new grand jurors were drawn each year and there is no satisfactory explanation of the total absence of Negroes. The motion to quash the indictment should have been granted. What we have said as to the good faith and intentions of the jury commissioners of Marion County also applies to those of Georgetown County.

It has been suggested that discrimination in the selection of the grand jury, illegal though it be, results in no prejudice to a defendant whom a trial jury has convicted. The theory advanced is that the States are not required to use a grand jury at all; that its power is only to accuse, not to convict; and that any indictment rendered by the grand jury merely puts the accused to trial. See the dissenting opinion of Mr. Justice Jackson in Cassell v. State of Texas, supra, 339 U. S. 282, 70 S. Ct. 629, 94 L. Ed. 839. But the majority of the United States Supreme Court has not taken that view.

The facts of the instant case are distinguishable from those in State v. Grant, supra, 1995 S. C. 412, 19 S. E. 2d

638; and State v. Middleton, supra, 207 S. C. 478, 36 S. E. 2d 742. In each of these cases we held that there was a failure to establish discrimination on account of race, although the defendant was indicted and convicted by an all-white jury. In the Grant case, there was only one registered Negro elector. In the Middleton case, although the percentage of Negro registered electors was only four or five percent, members of this race were rather consistently drawn and served both as grand and petit juror in Charleston County.

In concluding our discussion of this phase of the case, we desire to quote the following timely observation of the Supreme Court of our sister state of Georgia in Crumb v. State, 205 Ga. 547, 54 S. E. 2d 639, 641, with reference to the decisions of the United States Supreme Court on the question of racial discrimination in the selection of juries:

> "And whatever may be the individual opinion of the members of this court as to the correctness, soundness, or wisdom of these decisions, it becomes our duty to yield thereto, just as the other courts of this State must accept and be controlled by the decisions and mandates of this court. This being a government by law and not by men, the jury commissions in their official conduct are bound by the foregoing rulings of the Supreme Court of the United States, notwithstanding any personal opinion, hereditary instinct, natural impulse, or geographical tradition to the contrary."

Our conclusion that the Court below erred in refusing to quash the indictment and to quash the panel of petit jurors does not mean that appellant goes free. He is still subject to indictment by a lawfully constituted grand jury, upon which he may be tried again by a jury selected without discrimination. He will not be released but held pending the action of another grand jury.

In view of the foregoing conclusions, it is not necessary to the disposition of this appeal to pass upon the other exceptions. However, since on another trial several of these questions will likely arise again, we think it proper that they be settled now. Among these is the contention that the court below erred in admitting an alleged confession made by appellant. In determining whether it was invalid as a matter of law and should have been excluded, it is necessary to briefly review a few of the circumstances surrounding the homicide and the events leading up to the purported confession.

On the night of April 30, 1951, a young white woman was brutally murdered in the town of Georgetown. There were no eyewitnesses. It may be reasonably inferred from the testimony that she was assaulted shortly after nine o'clock while returning home from the picture show. Her husband was then at work. He arrived home about 10:45. After waiting for some time, he went to see several of his wife's relatives in an effort to find her. She was not at any of these places. He became alarmed and the officers were notified. An extended investigation followed. Finally, about 3:00 A. M., or about six hours after the alleged homocide, the body of the deceased was found in the furnace room of the parish house of Prince George Winyah Church, which is about three or four hundred feet from her home. Her head was covered with a newspaper. There was considerable dirt on the body. Her hair was disheveled and clothes disarranged. Some articles of clothing were missing. An examination revealed numerous scratches, abrasions and blood spots. There was also a large bruised area on the right side of the neck. Medical evidence was to the effect that death resulted from strangulation. The theory of the State was that the motive of the assailant was rape, but apparently from the evidence this purpose was not accomplished.

After the body was found, a search was made of the adjacent area. Fresh tracks of a man and woman were observed in a nearby vacant lot. A stocking belonging to the deceased was found in the adjoining cemetery. There was blood on one of the tombstones. The appearance indicated that a body had been dragged in the cemetery and over the wall. Sometime later the watch of the deceased was found near the wall of the cemetery and some of her clothes in a sawdust pile several blocks away.

An extensive investigation was made by the officers. Finally, on May 8, 1951, a warrant was issued for appellant. He was arrested on May 10th at Fairmount, North Carolina, and brought to the penitentiary at Columbia. On at least four or five occasions he was taken from the penitentiary to the offices of the State Constabulary, located five or six miles from Columbia, where he was interrogated. Most of the questioning was done by the Sheriff. We take the following from the testimony of the officers:

At first appellant denied any knowledge of the crime. About a week later, while still asserting his innocence, he said that deceased was killed by Charles Blunt, a Negro who lived at Georgetown, and that he was with Blunt at the time. Blunt was then brought from Georgetown to the headquarters of the State Constabulary, where he was questioned separately and along with appellant. He denied any connection with the crime but appellant continued to accuse him. Blunt was then placed in the penitentiary. Finally, on May 19th the Sheriff received information that appellant wanted to see him. He arrived at the offices of the State Constabulary on the afternoon of May 21, 1951, where he and several other officers interrogated appellant for about an hour. Appellant then indicated a desire to see the Sheriff alone. This was arranged and he stated to the Sheriff that he and not Blunt had committed the crime. According to the Sheriff, after appellant confessed, he was

asked what became of the watch of the deceased and the clothes which were missing, to which appellant replied that the watch was dropped near a wire fence and some of the clothing had been buried in a sawdust pile about 150 feet from his home. The Sheriff then got in touch by telephone with one of his deputies, who testified that a few hours later he found the clothes in the sawdust pile and the next morning after considerable raking, located the watch near the wire fence.

Shortly after the examination of appellant was completed, the officers undertook to get in touch with the stenographer employed at the offices of the States Constabulary for the purpose of having the confession reduced to writing. She was away from home and could not be located until around midnight, at which time the confession was typed and executed.

The details of this confession need not be related. It is sufficient to say that appellant, who lived several blocks from the scene of the crime, said that he assaulted the deceased with the intention of having sexual relations with her and during the course of such assault killed her accidentally.

The Sheriff and other officers testified positively that appellant was not at any time intimidated, abused or threatened; that his statements were freely and voluntarily given; that appellant was only taken to the offices of the State Constabulary four or five times; that he was offered but refused counsel; and that he was repeatedly told that any statement made by him might be used against him.

Appellant denied the foregoing testimony by the State relating to the confession. He said that after being arrested, he was treated "all right for two or three days", after which time the officers began getting "tough"; and that finally on May 21st, he was brought to the office of the State Constabulary about eight o'clock in the morn-

ing where he was questioned continuously without food until four or five o'clock the next morning, at which time he signed the purported confession on account of threats made against him. He said that about three o'clock on the afternoon of May 21st, he got into a fight with Blunt by whom he was badly beaten in the sight of the officers, who made no attempt to rescue him; and that about two or three o'clock in the morning of May 22nd, about an hour before he signed the confession, he was beaten with a strap by the officers and hit on the head with a blackjack. He contended that he was given no food until after he signed the confession.

It is readily seen that the evidence is in sharp conflict as to the voluntariness of this alleged confession. Under the rule which prevails in this State, the question of whether or not the confession is voluntary is one which is addressed to the Court in the first instance, but if the evidence with respect thereto is conflicting, the jury must be the final arbiter of such fact. Under the circumstances of this case, we think the trial Judge properly submitted this issue to the jury. State v. Miller, 211 S. C. 306, 45 S. E. 2d 23; State v. Brown, 212 S. C. 237, 47 S. E. 2d 521. The facts here are readily distinguishable from those in State v. Harris, 212 S. C. 124, 46 S. E. 2d 682, where a majority of this Court held that the issue of the voluntariness of the confession was properly submitted to the jury, but the United States Supreme Court reversed. 338 U. S. 68, 69 S. Ct. 1354, 92 L. Ed. 1815. Neither can it be said that the circumstances under which this confession was received violate those fundamental principles of liberty and justice which are protected by the Fourteenth Amendment against infraction by any State. Gallegos v. State of Nebraska, 342 U. S. 55, 72 S. Ct. 141, 96 L. Ed. 86.

Error is assigned in the admission of four pictures of deceased taken in the boiler room of the parish house

before the body was removed. It is claimed by the State that these pictures were relevant as showing the marks, bruises and abrasions made as a result of the assault, the condition of the clothes of deceased, and that her rings had been removed and placed on the index finger. There was no dispute as to these facts. All of them were fully established both by uncontradicted medical and lay testimony. These pictures were calculated to inflame and arouse the passions of the jury and their introduction was wholly unnecessary to establish the facts claimed. They should have been excluded. The rule governing this question is discussed in State v. Edwards, 194 S. C. 410, 10 S. E. 2d 587.

Another exception is to the effect that the trial Judge erred in refusing to submit to the jury the issue of manslaughter. Appellant denied any connection with the crime and introduced considerable testimony tending to establish an alibi. A careful examination of the testimony fails to suggest any theory upon which a verdict of manslaughter could rest. This exception is overruled.

We shall not undertake to pass upon the remaining exceptions. One relates to an exhibit which is not incorporated in the record before us. Several are not referred to in appellant's brief and presumably have been abandoned. There are others that relate to matters that will probably not arise on another trial.

In concluding this opinion, we desire to recognize the conscientious and able manner in which counsel for appellant, who served without compensation, have discharged their duties. The arduous task imposed upon them has been skillfully handled.

Judgment reversed and case remended for further proceedings in accordance with this opinion.

BAKER, *C. J.*, and FISHBURNE, STUKES and TAYLOR, *JJ.*, concur.

Petition for Rehearing

IN THE SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, alias "FAT EYE",

Appellant.

To the Honorable J. Reuben Long, Solicitor:

PLEASE TAKE NOTICE, that the above named Appellant, through his attorneys, Vernoid R. Bunch, John Bolt Culbertson and Sol E. Abrams, shall petition the Supreme Court on Wednesday, October 15, 1954 at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard for a re-hearing on the following grounds:

1. That the Appellant was denied due process of law under the constitution of South Carolina and the United States in that the appellant was tried under such conditions and in such a hostile atmosphere that he could not receive a fair and impartial trial.

2. That the composition of the jury was such that the Appellant was denied due process of law under the constitutions of South Carolina and the United States, in that all the jurors were not in a position to express their true

conviction as to the guilt or innocence of the Appellant as set forth in the attached Affidavit.

/s/ Vernoid R. Bunch
VERNOID R. BUNCH

/s/ John B. Culbertson
JOHN BOLT CULBERTSON

/s/ Sol E. Abrams
SOL E. ABRAMS

Attorneys for Appellant

Georgetown, South Carolina
This 8th day of October, 1954

The above petition is hereby denied.

T. H. STUKES	A. J.
C. A. TAYLOR	A. J.
G. DEWEY OXNER	A. J.
LIONEL K. LEGGE	A. J.
G. BADGER BAKER	A. J.

Columbia, S. C.
October 13, 1954

Motion for New Trial

IN THE SUPREME COURT
STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, alias "FAT EYE",

Appellant.

To the Honorable J. Reuben Long, Solicitor:

PLEASE TAKE NOTICE, that the Appellant above named, through his attorneys, Vernoid R. Bunch, John Belt Culbertson and Sol E. Abrams, shall move this Court for a new trial on after discovered evidence on the basis of the attached Affidavit of the juror Thomas O. Sanders, who in his affidavit states that the attitude of the other jurors and the pressure put on him was such that he was afraid to vote his true conviction that the Appellant was not guilty as charged.

/s/ Vernoid R. Bunch
VERNOID R. BUNCH
/s/ John B. Culbertson
JOHN BOLT CULBERTSON
/s/ Sol E. Abrams
SOL E. ABRAMS
Attorneys for Appellant

Georgetown, South Carolina
This 8th day of October, 1954

The above motion and the oral motion to file additional affidavits are hereby denied.

T. H. STUKES A. J.
C. A. TAYLOR A. J.
G. DEWEY OXNER A. J.
LIONEL K. LEGGE A. J.
G. BADGER BAKER A. J.

Columbia, S. C.
October 13, 1954

Affidavit of Thomas Sanders, Verified October 6, 1954

IN THE SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, alias "FAT EYE",

Appellant.

THOMAS SANDERS being duly sworn states as follows:

That he is a resident of the County of Georgetown, State of South Carolina and was a member of the jury that selected to hear the facts in this case and was a member of that same jury that convicted Arthur Waitus, alias "FatEye" during the February Special term of General Sessions Court held in Georgetown County, South Carolina consisting of eleven (11) White and one (1) Negro.

After all the testimony had been heard by this Jury, we were sent to our Chamber to reach a verdict in the case. At that time, I was working for the International Paper Company of Georgetown, South Carolina. On that same Jury was a member who was a foreman over to the International Paper Company and the reason why I voted to convict Arthur Waitus, alias "FatEye" is because I felt that if I voted contrary to the other White men on the Jury, I would have lost my job to the International Paper Company and that was the only means of support for my family.

Affidavit of Thomas Sanders, Verified October 6, 1954

Immediately after the conviction of Arthur Waitus, alias "FatEye", I was placed under the supervision of this foreman, V. M. Hodge. I also knew that the general feeling the White People in Georgetown County, South Carolina was and still is against Arthur Waitus, alias "FatEye" and if I had not voted to convict him my life would have been at stake because I felt an atmosphere of threats throughout the entire trial.

Because I was the only Negro on this Jury, I was afraid to give a just verdict in this case. I never thought Arthur Waitus, alias "FatEye" to be guilty of the crime charged and I know that it was impossible under conditions for Arthur Waitus, alias "FatEye" to have gotten a fair trial in Georgetown County, South Carolina.

/s/ THOMAS O. SANDERS (L.S.)

Georgetown, South Carolina
October 6, 1954

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN } ss.:

PERSONALLY appeared before me Thomas Sanders, being duly sworn states that this statement true to own knowledge and that this statement was given of his own free will.

/s/ THOMAS O. SANDERS (L.S.)

Sworn Before me this 6th
day of October A. D. 1954.

/s/ VERNOID R. BUNCH
Notary Public for South Carolina

Deposition of Thomas Sanders, Verified October 10, 1954

IN THE SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, alias "FAT EYE",

Appellant.

THOMAS SANDERS Being First Duly Sworn by SOLICITOR, J.REUBEN LONG, Testifies as Follows:

Questions by Sheriff Garris Cribb:

Q. Did you sign an affidavit for Lawyer Bunch concerning the Fat Eye Case. A. Yes, sir.

Q. Do you realize what was in the affidavit you signed. A. Yes I realize what was in it.

Q. Who came to see you about this affidavit. A. Lawyer Bunch, and Mr. Porcher.

Q. What did they ask you. A. They asked me if there was anybody from the mill on the jury, and I answered that I knew one, Mr. Vernon Hodge. They asked if I was afraid while I was a member of the jury. I told them no that I was not afraid. They asked me if I thought that Fat Eye could have gotten a fair trial in Georgetown, and I told them that I hardly knew what to say, but I doubt if he could.

Deposition of Thomas Sanders, Verified October 10, 1954

Q. Were you afraid that you would lose your job if you voted to convict Waitus. A. No sir.

Q. Why did they put this in your previous affidavit that you would lose your job, if you voted to convict him. A. I did not put that in my affidavit; I told him that I was not afraid I would lose my job, but he said that he was just nicening it up. I told him that that wasn't necessary to put all that stuff in it.

Q. Did you vote to convict Arthur Waitus. A. Yes sir.

Q. Why did you vote to convict him. A. From the evidence and testimony given at the trial, I thought that he was guilty.

Q. Would you have convicted him if you had thought that he was not guilty. A. I never would.

Q. Did you vote to convict him because you were afraid of losing your job. A. No sir.

Q. Have you ever heard of any threats against you. A. Nobody has threatened me personally. Miss Maria Wright (a colored woman) from Santee told in the presence of my brother that if Fat Eye was convicted and electrocuted that they were going to kill me.

Q. Have you ever heard of any threats from any white people concerning this case. A. No sir.

Q. Do you think now that Fat Eye committed this crime. A. From the evidence and testimony I think he did.

Q. If you were placed on another jury and heard the same testimony and evidence again, would you vote to convict Fat Eye. A. Yes sir. I want to add this to my testimony: I went according to the evidence and testimony which I heard in my conviction of finding him guilty.

Q. Did you tell Lawyer Bunch that you did not feel that Fat Eye was not guilty. A. I told him that under the testimony of the trial that Fat Eye was guilty.

Q. Did you tell Lawyer Bunch that the feeling among the white people against Fat Eye was such that you were afraid not to convict him. A. No sir.

Deposition of Thomas Sanders, Verified October 10, 1954

Q. Did you have any fear whatsoever while you were a member of the Jury. A. No sir.

Q. Did the fact that you were the only Negro on the jury influence you in any way in rendering your verdict. A. No sir.

I, THOMAS SANDERS, do certify that I have read the above questions and answers propounded to me by Sheriff Garris Cribb and all that I have said is true and correct. This testimony was given in the presence of: Sheriff Garris Cribb, of Georgetown County; Woodrow Carter, Deputy Sheriff of Georgetown County; Sheriff John Henry of Horry County; Robert L. Walker, Cafeteria Manager of International Paper Company, Georgetown (who transcribed the testimony); and State Solicitor, J. Reuben Long.

I further certify that I was not threatened or promised any hope or reward whatever in making this statement, but it was made freely and voluntary on my part.

/s/ THOMAS O. SANDERS.

Georgetown, S. C.
October 10, 1954

STATE OF SOUTH CAROLINA }
COUNTY OF GEORGETOWN } ss.:

PERSONALLY appeared before me Thomas Sanders, being duly sworn states that this statement true to own knowledge and that this statement was given of his own free will.

/s/ THOMAS O. SANDERS.

Sworn Before Me this 10th
day of October, A. D. 1954.

/s/ J. REUBEN LONG
Notary Public for South Carolina

Motion for Stay of Execution

IN THE SUPREME COURT

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

—o—

THE STATE,

Respondent,

vs.

ARTHUR WAITUS, alias "FAT EYE",

Appellant.

—o—

*To the Honorable J. Reuben Long, Solicitor*s

PLEASE TAKE NOTICE, that the Appellant above named, through his attorneys, Vernoid R. Bunch, John Bolt Culbertson and Sol E. Abrams, shall move this Court on Monday, October 18, 1954, at 10:00 o'clock a.m., or as soon thereafter as counsel can be heard, for a stay of execution, said Appellant's execution being set for October 22, 1954.

This motion shall be based on the grounds that the Appellant is petitioning the United States Supreme Court for a writ of certiorari, and that the stay of execution is requested so that this pleading may be completed.

/s/ Vernoid R. Bunch
VERNOID R. BUNCH

/s/ John Bolt Culbertson
JOHN BOLT CULBERTSON

/s/ Sol E. Abrams
SOL E. ABRAMS

Attorneys for Appellant

Georgetown, South Carolina,
this 12th day of October, 1954.